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Winter 1992

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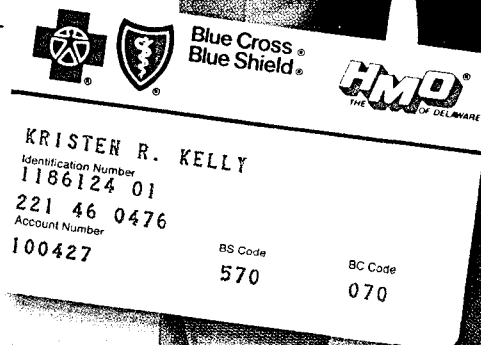
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Cover: Seventeenth century Japanese artists of the Ukiyo-e school drew upon the arrival of Portuguese, Spanish, and Dutch merchants and Jesuit missionaries as the subjects of a pair of exquisite six-panel screens, rendered in ink, color, and gold on gold-leafed paper, now in the collection of the Freer Gallery of Art. Our cover, a detail from one of these screens, speaks from the past to the modern Western world as it ventures forth again in pursuit of global treasure.

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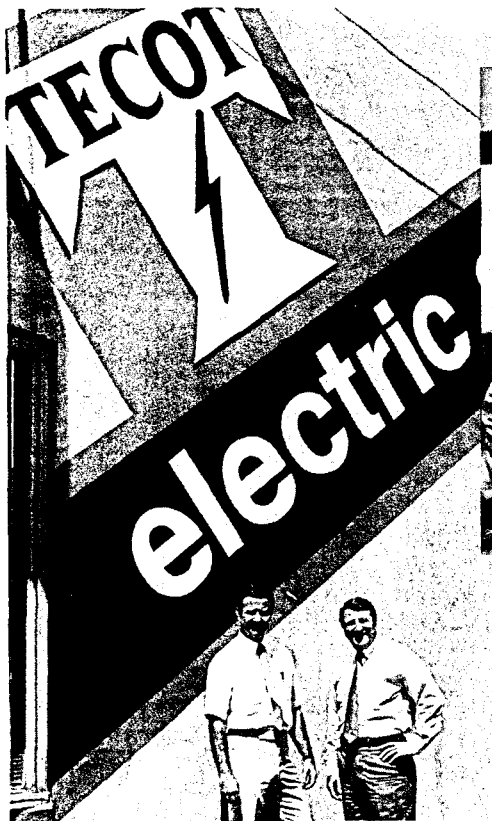
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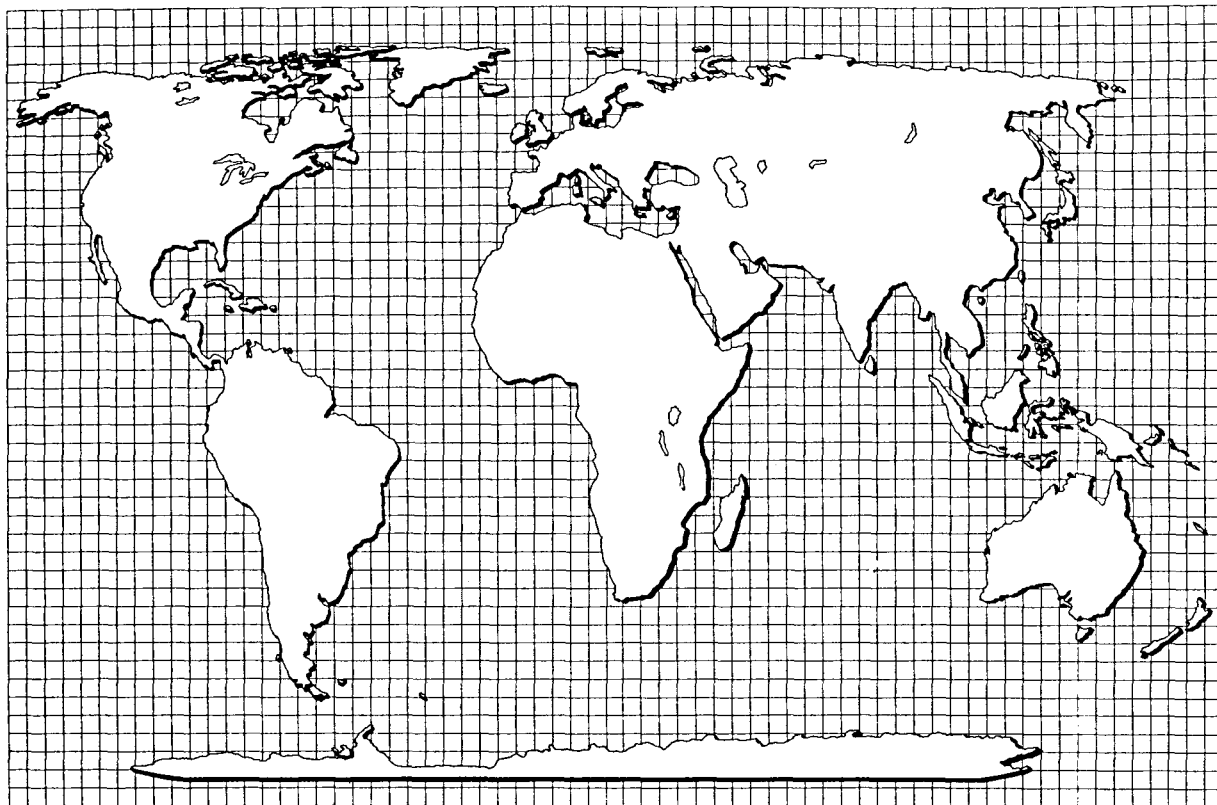
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The Great Globe Itself

Introduction

Carla Sydney Stone

It is often said that the only way to get the attention of the American people is to hit them over their heads with two-by-fours. When the subject is international economics, the October 19 market crash is downright providential. If it hadn't happened, it would have had to be invented.

Before "Black Monday", about the only business news to be found in the commercial broadcast media was an announcement of the day's closing Dow Jones Industrial Average. International trade coverage consisted of BMW, Mercedes, or Cuisinart advertisements. Newspapers and magazines didn't do much better. The business section of most local papers was tucked between the sports pages and the comics. It took up several pages, but only because stock transactions are printed. Something as complex as international finance was reduced to a picture of LIVE AID.

Since October 19, journalists have become instant experts, business is the new "hot bear", and economists are the media darlings. The new buzzword in corporate America is "global competitiveness". Not since the Arab oil embargoes in the 1970s has international business received so much attention. It has taken two major economic disruptions within the last 15 years, but it finally has been made clear to the media and the American people, if not to our policymakers, that our economy is inextricably bound up with those of other nations.

No one event was responsible for the panic selling on the international exchanges. Many analysts attribute the steep decline to computerized program trading and portfolio insurance schemes that automatically force share sales without the benefit of human intervention. Whether computers and the automated linkages among trading houses and exchanges located around the globe exacerbated the effects of trading losses may never be known. It is clear, however, that the central issue touching off the correction to a five-year bull market was a world-wide concern about U.S. economic policy. But why now and not a year ago?

Much of the world looks the same as it did last year. Many Third World countries are threatening to default on their loan payments to commercial (primarily American and European) banks. The World Bank is embroiled in a fight over permitting its loans to be profitable. The International Monetary Fund is continuing to advance structural adjustment loans to its poorest members while advising, but not forcing

austerity programs. There are droughts in the SubSahara and people are starving even as food rots on the docks.

Interestingly enough America doesn't look all that different either. Now as then the U.S. has record trade and budget deficits. The U.S. dollar is dropping. Congress has just passed compromise tax legislation to cure our economic malaise. American business leaders are driving to Washington in \$75,000 Mercedes to lambaste Congress over its inaction on trade issues. American teenagers listen to the latest rage on Sony Walkmans. Americans wear Asian-made clothes, eat imported fruits and vegetables, buy foreign cars, and scream that their jobs are endangered by other countries' unfair trading practices.

While on the surface it seems as if nothing has changed, there is a greater sense of urgency among the public to force policy changes that will permit the United States to deal with the twin trade and budget deficits. Most important, strident "Japan bashing" is being replaced by a more careful analysis of our bilateral economic and political relations as well as new understanding of our relationships with our European and North American allies.

The United States is the world's richest market. More than half of the merchandise exports from Canada, Latin America, and the Caribbean are destined for our shores. Thirty-five percent of our exports go to these areas. While Japan supplies 20 percent of our imports, it takes only 10.5 percent of our exports. This mess will result in a U.S. trade deficit of \$159 billion for 1987.

Two years ago, in response to the increasing trade deficit, which government policymakers and business leaders ascribed to an overvalued dollar, the U.S. met with four of its strongest allies (England, France, West Germany, and Japan) to hammer out a plan to manage the fall of the dollar. The next year Italy and Canada (our largest trading partner) joined the negotiations. Since February 1985 the value of the dollar has dropped 40 percent against European currencies and 50 percent against the Japanese yen. While a depreciated dollar does mean that U.S. exports will be cheaper and imports will be more expensive, a devalued American dollar is no panacea for the trade deficit.

During the year September 1986 to 1987, imports to Japan rose by 20 percent in yen terms and 30 percent in devalued dollar terms. However, the United States, which is Japan's largest trading partner, was not the beneficiary of Japan's increased appetite for foreign products. During the first nine months of 1987, American imports rose three percent in dollars; South Korea, 47 percent; Hong Kong, 49 percent; and Taiwan's imports went up a staggering 55 percent. Imports from the EEC rose a remarkable 11 percent even when measured in yen. More forces than the strength of the dollar are at work: the U.S. internal economic structure and the growing internationalization of Japanese corporations are most important of these.

The United States is a capital goods economy, despite the shift from large-scale manufacturing to the service sector during the last ten years. We produce commodities such as chemicals and grains, and manufacture capital-intensive products such as airplanes, mainframe computers, and earthmoving equipment. However, we buy consumer goods such as stereo equipment, clothing, and appliances. Over 80 percent of U.S. imports are manufactured goods and finished products. Only 42 percent of Japanese imports are manufactured goods, consistent with Japan's status as the world's premier producer of consumer goods.

The 1987 *White Paper on International Trade*, published by the Japanese Ministry of International Trade and Industry, identifies four trends contributing to Japan's improved competitiveness even in the face of an appreciated yen:

1. An increasing advance into the United States and the newly industrialized Asian nations;
2. An increase in overseas procurement of parts and raw materials;
3. Changes in forms of investment;
4. An increase in overseas investment by small and medium sized firms.

The Japanese first began to build offshore plants in the 1950s. This trend accelerated during the 1970s as the country shifted its domestic industrial priorities from low-tech and energy-intensive industries to the high technology and service sectors. The most visible evidences of the move are automobile assembly plants in

(Continued on next page)



This issue of DELAWARE LAWYER is a series of cautionary tales about a world very different from the one we confronted in power and a deep sense of self-satisfaction at the end of World War II.

The design of this issue was the work of Carla Sydney Stone. She is exceptionally well qualified to address our changing roles in the world economy, the pitfalls and opportunities of change, and the implications for our profession.

Carla Stone holds a Baccalaureate degree in mining engineering and a Masters degree in mineral economics from Columbia. She has had further post-graduate training in finance, economics, and Japanese. Her company, Business & Policy Associates, Inc., is an Asian trade consulting firm, headquartered in Greenville with a representative office in Hong Kong. She also teaches an over-subscribed course in international trade management at the College of Business & Economics of the University of Delaware. She is an accomplished editor (e.g. the recent fourth edition of Economics of the Mineral Industries) and a regularly featured speaker at economic and trade symposia. She is a member of the Governor's International Trade Council, and was recently honored by the United States Small Business Administration as Exporter of the Year 1987 for Delaware.

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INTRODUCTION

(Continued)

the United States and electronics and appliance plants in Korea and Taiwan. Imports of components and finished manufactured goods from other Asian locations already are commonplace as Japan takes advantage of lower wage and currency rates in the newly industrialized countries. Honda has announced that it plans to export cars from the U.S. to Japan in order to take advantage of the cheaper American dollar. Most Japanese companies envision a time when production can be shifted from one country to another to take advantage of labor, materials, our currency rates, or to be closer to their markets, as American companies have done for the last 20 years. IBM and DuPont are often named as successful competitors in Japan, notwithstanding the high cost of doing business in Japan. Skadden Arps, the first American law firm to set up shop in Japan, hopes to emulate their successes. (See "Getting Started").

In 1986, Shiro Miyamoto, the president of Japan External Trade Organization, said that the U.S. trade deficit is the result of our addiction to imports and to "American managerial mindset, including the transnational behavior of U.S. companies." This behavior, he felt, conflicts with the overall needs of our country. Export-linked competitiveness, which is good for the nation as a whole, may be detrimental to the objectives of the profit-linked competitiveness of individual U.S. companies.¹ It is not surprising that his prescriptions for curing our deficit are similar to those developed in Geoffrey Gamble's and Theodore F. Killheffer's article at page 7 and W.P. Schmoe's speech at page 14. They are to make trade a number one priority; to lower the cost of capital formation; to place greater emphasis on research and development and new technology; to improve U.S. educational standards by providing more opportunities for vocational training.²

However, the picture is not entirely bleak. Americans are taking steps to reduce the trade deficit. Corporations are placing greater emphasis on quality and marketing. Universities are offering courses and special programs (Lesley Suddard's review of "Global Competitiveness in the 1990s" at page 22.) that will prepare their graduates to compete in the international workplace. As Ben Irvin points out (page 18) Congressional adoption of the Harmonized System will place U.S. traders on more equal footing with their partners overseas and will help the U.S. in trade negotiations and enforcing agreements.

Even those workers who have been displaced as a result of increased foreign competition (Eleanor Craig at page 31) find jobs in other industries, such as banking, the focus of Delaware's economic development programs. (David Swayze, page 28 and Andrew G. Knox, page 26).

I'm happy to report that *DELAWARE LAWYER* did not need the market crash to turn its attention to international trade. This issue has been in the planning for over a year. And what a year it has been!

¹ Miyamoto, Shiro, "Is the U.S. Serious about Its Balance of Payments?", *Journal of Japanese Trade & Industry*, No. 6, 1986, November/December 1986, p. 35-37.

² *Ibid.*



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The Enemies Of United States' Trade Competitiveness

A Lawyer's Perspective

Geoffrey Gamble and Theodore F. Killheffer

Many who read these pages may be too young to recall the Hollywood singer and comedian, Phil Harris. He's quite old now. Several years ago, he gave a performance and in the middle of it he turned, out of breath, to the audience and said, "You know, if I knew I was going to live this long, I would have taken better care of myself!" In many ways, any lawyer writing about international trade has to feel like Phil Harris. If he knew he was going to end up some day writing about international trade, he would have paid more attention to economics in college. Even that might not have been enough. International trade today is an interdisciplinary phenomenon. In addition to its economic and legal aspects, it involves politics, culture, societies and even geography.

THE PROBLEM

Present Situation:

U.S. Deindustrialization

For some time now, U.S. production has been undersold by foreign production. Our production (and our jobs) have shifted to other countries in such sectors as steel, autos, machinery, textiles, and shoes. Certainly the United States has not experienced a net loss of jobs; unfortunately, however, lost jobs in major manufacturing industries have often been replaced by lower-paid service industry jobs.

Why is this happening? It is because the United States, since World War II, has suffered what might be called an "economic superiority complex". There has been a misinterpretation of our world economic dominance ever since

the end of World War II. We were told that our high standard of living reflected high productivity and that we would always be more productive than others if only we and our partners engaged in "free trade". The fact of the matter is that our high standard of living resulted not from our "productivity" but because the rest of the world was either devastated by war or newly emerging from colonial status. We simply have not reacted quickly enough to these changed circumstances.

Comparative Advantage

The principle underlying the economists' rationale for free trade is called "comparative advantage". It was first proposed by David Ricardo in 1817 and may be best summed up as "doing what you do best". If both the English and the Portuguese, to use Ricardo's example, enjoy woolen clothes with port wine, the English should produce the sheep and the Portuguese should work the vineyards. If both countries reject trade and insist on self-sufficiency, the Portuguese will be chilly, drinking their port, and the English will be warm and sober—certainly an undesirable state by any standard of living.

Mutually beneficial trade today doesn't seem to occur automatically as the theory might suggest. If there were only two nations in the world—one producing wool and the other producing port—any imbalance would be unlikely. If England wanted port, Portugal would expect wool of equivalent value. If England said that it would send an IOU instead of wool, it is improbable that the Portuguese would let their casks of port even leave the quay.

The American Dream?

We Americans trade, instead, in a world that has *willingly* accepted American IOUs in exchange for our goods. That is a privilege denied to most countries of the world, such as Brazil or Mexico. America's ability to charge its huge foreign purchases is a reward for past diligence. Nevertheless, an unlimited credit card is an economic narcotic; promiscuous use has inevitable, though often delayed, consequences. Won't the world, though, react to the erosion in the value of our IOUs by eventually refusing to accept them? Here, again, our good reputation plays a perverse role. A world that finally rejects our IOUs will eagerly accept ownership of our *assets* instead. In contrast, creditors of Bolivia are understandably reluctant to trade large amounts of goods or IOUs for fixed assets within Bolivia. Why? Because the creditors are likely—at some point—to have their property confiscated. The United States is viewed differently. Other nations will confidently trade their consumer products for our real estate and for equity in our corporations. Foreigners' trust in our IOUs may eventually weaken, but trust in America will remain strong. Staggering shifts in ownership have already begun to occur.

Let's take a look at the clock attached to the time bomb ticking away on us. The equity value of all public companies in America is just under \$3 trillion,* which is the equivalent of less than 20 years of our current merchandise trade imbalance. Income from these foreign investments, as well as investments in

(Continued on next page)

*Give or take a trillion, depending on Wall Street - The Editors

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Trade Competitiveness (continued)

Treasury bills and other forms of debt, will grow correspondingly and add to the buying power that foreigners are amassing from their trade surplus. Ownership means control. Foreigners may and indeed are likely to exercise that control over American assets in a way that is not necessarily in the best interest of the United States or its people. Our wealth in America is a bane in our attempts to achieve a trade balance. We are in many ways like a once wealthy plantation family that annually sells acreage so that it can sustain a lifestyle unwarranted by its current output. In the end, the family will have traded the life of an owner for the life of a tenant farmer. Like the ruined Blanche duBois, we cannot indefinitely depend upon the kindness of strangers.

If our children are to enjoy a ... satisfying life in America in the 21st Century, we're all going to have to pay more taxes and ... tell our representatives in Congress that they must spend less money.

What Have Other Countries Done?

The Third World is now in a position to undercut the developed world in many manufacturing sectors. After World War II the U.S. embarked upon a "free trade" course. Asia did not. Countries such as Japan, Taiwan, South Korea, and Singapore oriented themselves towards raising the economic status of their people quickly by producing for markets of high-income nations. Their policy has been called "mercantilism" and sometimes "managed trade". In contrast, U.S. trade policy bore no relation to economic reality. We were caught up in a "free trade" (considered good) versus "protectionism" (considered bad) axis. At the time, there was considerable justification for such policies. Excessive trade restrictions had prolonged the depression of the 1930s. Furthermore, an open United States market was needed to fuel the post-war recovery of the rest of the world.

Successive Administrations failed to come to grips with the world trade situ-

ation as it has changed and have failed to protect the economic interests of the American people. Today, many people believe the United States practices "free trade" and that the rest of the world deals with us unfairly. In fact, if we look at government-created market distortions around the world, we see that, with the possible exception of Hong Kong, no one practices "free trade". The real question is the *degree* of market intervention by governments. The United States, Canada, Germany, and some of the Scandinavian countries might be characterized as having *moderate* government intervention. The rest of the Common Market, Latin America, Africa, and most of Asia, could be characterized as having *extensive* intervention by their respective governments, and the remainder of the world consists of the nonmarket economies of communist nations.

Where Is The World Going?

Much of the world is moving towards the Japanese model of mercantilism, not towards unrestricted trade. We would differ from some in Congress: Japan is not to be condemned, but admired. Japan and other Asian countries did not possess natural comparative advantages of the traditional kind, so they consciously combined what advantages they did have—chiefly cheap and abundant labor and governments willing to provide financing, trade incentives, and domestic industry protection—to create an internationally competitive position. This has been called "dynamic comparative advantage". Congressional Japan-bashing and ranting about unfair trade practices is wrong because it represents a *negative* policy. What we need is a cohesive, *positive* policy.

The task of restoring balance in United States trade is a formidable one, and the difficulties must not be underestimated. Foreign suppliers have become entrenched not only in our domestic markets but in our traditional export markets as well. They will not go away without a fight. Look, for example, at the sale of Japanese cars in the United States. In spite of the dramatic shift in the dollar/yen exchange rates, the Japanese share in the U.S. auto market has remained virtually unchanged. The Japanese have cut their margins to maintain the position they have earned in our market.

Looking around the world, we get some idea of the changes that face us in
(Continued on next page)



Well, talk about versatility! Back in the September Bicentennial issue Geoffrey Gamble was enlightening us about wicked King John, the Magna Carta, and the ins and outs of heraldic decor. In this issue he rejoins us in the late 20th century in a searching inquiry into our behavior as the wastrel heirs of rich and once prudent parents.



Mr. Gamble's collaborator, Theodore Killbaffer is Managing Counsel-Tax in the DuPont Company Legal Department. In his more than thirty years with DuPont, he has had an extremely broad range of experience, beginning as a computer operator, progressing through tax accountancy, to a variety of assignments in the Legal Department. His perspectives, reflected in this article, doubtless have been seasoned by his former role as Senior Counsel to the International Department and his experience as Chairman of the Industry Sector Advisory Committee on Chemicals and Allied Products for Foreign Trade Policy Matters, to which he was first appointed by former Secretary of Commerce Baldrige and subsequently by U.S. Trade Representative Brock. Mr. Killbaffer is a member of the Pennsylvania Bar.

Trade Competitiveness (continued)

penetrating export markets. Countries accounting for 40 percent of U.S. imports have not allowed their currencies to strengthen against the dollar, so recent currency adjustments will not help our trade with those countries. These include

Canada, South Korea and Taiwan. Expanded trade with Japan is inhibited not only by conventional trade barriers but also by characteristics of Japanese culture: The Japanese regard the purchase of manufactured goods from abroad almost as unpatriotic, and their propensity to save rather than to consume is the highest in the world.

Europe faces problems of high costs, significant unemployment, and stagnating industries. The cheaper dollar will help us regain lost European markets, but political realities suggest that our opportunity to reverse the trade imbalance at the expense of the Europeans is limited.

For Latin America, with its huge indebtedness, it is imperative to generate large positive trade balances. There is little opportunity there for U.S. exports to increase significantly and indeed, in the 1980s, imports from Latin America into the U.S. have soared more than 50 percent.

The United States cannot become more competitive in world markets overnight. But we must get to work quickly to restore the trade balance. Fortunately, the tools are within our hands. We must develop a consciousness of the importance of the U.S. stake in international trade. Recognizing that, we need to change some aspects of United States economic policy that inhibit our trade performance. These are the real enemies.

ENEMY NO. 1 - U.S. MACROECONOMIC POLICY

The major cause of our declining trade performance is U.S. Government fiscal policy. As we have incurred unprecedented federal budget deficits, the United States has required a massive infusion of foreign capital to finance federal spending. The low level of U.S. savings has simply been overwhelmed by federal deficits. These borrowings have sustained U.S. interest rates and put upward pressure on the dollar. As a consequence of the dollar falling in value more slowly than trade pressures would normally require, U.S. goods have become less competitive both in our own market and abroad.

This fact suggests that unless we get our federal budget into better balance, we can expect little real progress on our trade deficit. Attention to fiscal policy is very much an essential element of the trade issue. As the U.S. Government moves to address the budget deficit, the international competitiveness of U.S. products must be an important consideration. Until the fiscal deficit is corrected, however, there will be pressure on interest rates, cost of capital, and a demand for foreign goods. One might go so far as to say that the *only* way we can raise

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Our tax laws, too, ignore the realities of international trade. The Tax Reform Act of 1986 first and foremost did nothing to address the budget deficit problem. Beyond that, it reduced incentives to invest in plants, machinery and equipment, discouraged U.S. firms from pursuing overseas markets and raised the tax burdens on savings and investment. We must have a tax policy that complements our efforts to enhance U.S. competitiveness in world markets.

both investment and international competitiveness simultaneously is to increase national savings by deficit reduction.

The restoration of the dollar to its present value was a necessary step, but it will not fully correct the trade imbalance since it does not deal with the underlying economic disequilibria. Furthermore, with 40 percent of imports coming into the United States originating in countries whose currencies have not strengthened against the dollar, efforts in exchange rate adjustments must include those currencies pegged to our dollar.

Our tax laws, too, ignore the realities of international trade. The Tax Reform Act of 1986 first and foremost did nothing to address the budget deficit problem. Beyond that, it reduced incentives to invest in plants, machinery and equipment, discouraged U.S. firms from pursuing overseas markets and raised the tax burdens on savings and investment. We must have a tax policy that complements our efforts to enhance U.S. competitiveness in world markets.

If our children are to enjoy a reasonably satisfying life in America in the 21st Century, we're all going to have to pay more taxes and we are going to have to tell our representatives in Congress that they must spend less money. There is no other way. As the 1988 election season gets underway, we should put trade very near the top of our list and demand straight answers from Presidential and Congressional candidates about their commitment to American competitiveness.

Enemy No. 2 - U.S. Foreign Policy

Application of U.S. national security and foreign policy sanctions to foreign trade and investment of U.S. multinational enterprises in an attempt to influence foreign countries has been plagued by inconsistent policies, ineffectiveness, outright failures, and the sacrifice of long-term national interests.

We are dealing primarily here with two laws—the International Emergency Economic Powers Act of 1977 (IEEPA) and the Export Administration Act of 1979 (EAA).

For example, in 1979 President Carter imposed sanctions under the EAA. The immediate effect was the loss of over \$2.3 billion in export sales of U.S. farmers and \$2.5 billion in costs of the U.S. Government (in other words, all of us) to take over grain that otherwise would have been sold to the Soviets. The U.S. economy lost \$11.4 billion in national output and \$3.1 billion in personal income. In 1981 the GAO concluded that the Soviets had been able to replace most of the embargoed U.S. grain from Argentina, Australia, and Canada.

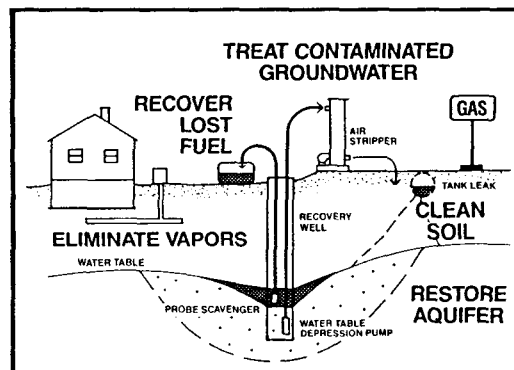
The U.S. became a marginal supplier of Soviet grain. After six months, the embargo was lifted. As you know, the Soviets are still in Afghanistan, and the U.S. has lost many more billions of dollars in sales of grain that otherwise would have been made to the Soviet Union over the past seven years. Furthermore, like the stinger of a bee, the grain embargo was a weapon we could only use once. Now that we are a marginal supplier, reuse of this particular embargo would be totally ineffective.

Under the IEEPA, President Reagan in 1986 issued an Executive Order terminating all commerce with Libya. U.S. companies with Libyan investments were required to sell their assets, thus enriching the government of Libya. Thanks to the help of our friends in Europe, Libya was not prevented from producing and marketing oil in quantities up to its agreed-to OPEC quota and Mr. Khadafy remains in power. A degree of cynicism in recounting these instances should not obscure the issue; what the Soviets did in Afghanistan was wrong and Col. Khadafy's terrorist activities around the world should clearly be punished. The

(Continued on next page)

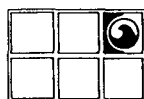
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Trade Competitiveness (continued)

point is that the sanctions the United States chose to apply were ineffective, expensive, and harmful to American competitiveness.

What makes this particular enemy of competitiveness so troublesome is that we all generally agree with the nobleness of the causes. Most of us abhor apartheid in South Africa. Most of us deplore discrimination against minorities in Northern Ireland. Nevertheless, using American multinationals as tools for public and private foreign policy diminishes vital competitiveness and to date has been ineffective. Our friends and allies seem to do much better in being able to "lightning-rod" political causes away from international competition.

When we get caught up in a cause, however noble, we must step back for a moment and ask ourselves how *effective* is the proposed economic sanction really going to be. We should ask those proposing the sanctions exactly how much it is going to cost America and its people as a whole. Lastly, we should ask what our allies are doing to support the proposed sanctions and what alternative foreign policy sanctions are available. What we need when economic sanctions are proposed is, in effect, an "environmental impact statement" before any action is taken.

Americans have been told for so long that they do not have a culture that we actually believe it. This is a dangerous thing. Call it what you like: Judeo-Christian—Greco—European-melting pot, but it is a culture. We tend to take what we consider to be universal principles (democracy, ethics, egalitarianism, upward mobility) and enforce them wherever we can around the world. Many of us feel deep down that the system of ethical, political, and economic principles upon which America is built is the correct one and that the rest of the world is at various stages of imperfection moving towards, and sometimes away from, our goal.

We do not hesitate, either as individual Americans or as a government, to indulge in cultural ignorance, which the rest of the world perceives as cultural arrogance. In 1977 Congress enacted the Foreign Corrupt Practices Act, which prohibits bribery of foreign government officials to obtain or retain business. Few would quarrel with that. However,

it goes beyond the individual activities of U.S. firms and covers the affairs of their foreign distributors and customers as well if the U.S. company has "reason to know" that bribery is going on. In many Third World countries, such as Indonesia, gratuities are a way of life. Far from trying to help U.S. companies find legitimate ways to compete with their Japanese and European counterparts in this problem area, one agency of the U.S. Government, the Department of Justice, has actually gone so far as to state that it doesn't want to issue guidelines because it is afraid it will be easier to "get around" the Act if guidelines are issued!

ENEMY NO. 3 - LACK OF A NATIONAL TRADE STRATEGY

The federal government does not so much *need a trade policy as it does to make* trade its policy. Trade performance simply must have a higher national priority. Trade concerns have often lost out when they are at cross purposes with defense concerns and with public and private foreign policy. The cost to international competitiveness for American companies of this insensitivity to trade on the part of our government is incremental, not monumental, but it is adding up. Author Kevin Phillips has called for a new "economic nationalism" for the United States. Peter Drucker has said that the time has come to build an awareness of trade and comparative U.S. economic strength into official policymaking.

As a nation, we must come to terms at long last with our own finite resources. We no longer have an unlimited frontier in which to expand. We can no longer take in unlimited waves of immigration to enrich our citizenry. We must do what others have done before us. We must take a long, hard look at ourselves and our resources and marshal them in a way that we can effectively and successfully exist and compete in this world. We have to stop the dislocation and exportation of industries that are necessary for U.S. economic well-being. It is against our nation's survival instincts to allow its basic industries to crumble. Our strategy must be a synthesis—a careful and reasonable nationalism and a partnership between the private and public sectors. A practical first step is to

identify threatened industries and examine past experience with managed sectors. What has worked? What has not? Why?

The U.S. Government must establish a forthright trade strategy that puts our major trading partners on notice that we assign the highest priority to reversing our international trade deficit. We, as a nation, should actively seek to dismantle trade barriers facing American exports and investment. We should focus on countries with persistently high bilateral trade surpluses. Where good faith efforts fail to reduce obstacles to trade and investment flows, the U.S. should retaliate in full and in kind as provided for under U.S. trade laws and under the provisions of our international treaty obligations. In this regard, there should be a more constructive response to trade remedy petitioners by the U.S. Government. While the government must honor U.S. international obligations, it need not turn each proceeding into a politicized, adversarial one between a petitioner and his government.

ENEMY NO. 4 - PRIVATE SECTOR COMPLACENCY

We who work in the private sector cannot put the total blame for the current trade imbalance on others. We must get our own house in order and change the way we think. Despite what some people might tell us, there is nothing immoral about labor and industry uniting and working together in common interest. There is nothing meritorious about government bureaucrats who think that in order to be successful they must be the adversaries of the private sector. In the interest of enhancing domestic productivity, relationships among government, industry-labor and other sectors of the public must become more positive and productive.

Even though many industrial sectors in this country are going through a very tough period, they can't be crying to the government to preserve the status quo. What they need to do is look at their world-wide competition, emulate the successes, and learn from their mistakes.

If they are in a state of crisis and have to come to the government for relief, they should come with organized and realistic plans outlining the parameters of the relief sought and a timetable for an end to the relief. Many of these sectors have to take a sobering look at their future.

Private industry must make every effort to meet and exceed the competition internationally. Innovation, quality, service, price and cost containment should be constantly reevaluated and improved.

Here are the enemies of international competition and some possible solutions. These are not *all* of the enemies, nor have we exhausted the list of solutions. No one has a monopoly on those. Debate is healthy; it serves as a means not only of hammering out options but also of exposing us all to different points of view. Albert Einstein once said something to the effect that everything has changed but our thinking. Our thinking about international trade will have to change if we are to achieve consensus on goals broad enough and big enough to be worthy of our state and of our nation. ■

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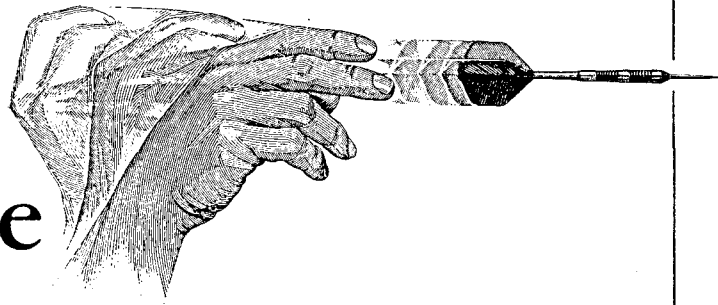
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Reflections on the Global Village



Wilfred P. Schmoie

(Remarks delivered at the College of Business, University of Delaware on October 28, 1987)

Let me begin with a personal perspective of internationalism in general. Since my wife and I first set up house we've moved 17 times answering the call of business. We have lived all over this country, of course, and in other parts of the world as well. Nowadays this is not at all unusual in corporate life. One thing that my wife and I have learned in this moving around is that people all over the world are not really that much different in terms of their hopes and aspirations. There is no good reason why we should not be able to get along with almost anybody, anywhere. That has been our experience, and we have been very fortunate in meeting a lot of fine people of all shapes, sizes, and hues, and making many friends. Another observation that I would like to make is that wherever I travel—here, in Europe or in Asia, I do not remember having made one trip in recent years without bumping into a friend, a colleague, or a competitor in a hotel lobby or on the street. There are two points here. One is that business is a wonderful common denominator among all the peoples of the world. And the second point is that this *is* a small world, and it's growing smaller.

In terms of business and commerce, we have already become what Marshall McLuhan called "a global village". The reasons are fairly widely understood, and we need not take up a lot of time this evening in discussing them. A listing of reasons under the heading "political/diplomatic initiatives" would have to include the Marshall Plan—that enlightened program that helped nations ravaged by World War II get back on their feet—the General Agreement on Tariffs and Trade, formation of institutions such as the International Monetary Fund and the World Bank, and the creation of

multinational trading groups such as the European Common Market.

In addition, the world has become vastly more interdependent in the past two decades as mature industrial nations such as the United States find they can no longer meet their own needs for natural resources. The most obvious example of interdependence is oil, of which America now imports about 40 percent of its needs. But oil is by no means the only case in point. The United States needs to import *most* of its strategic minerals—in fact, more than 70 percent of the 16 most critical strategic minerals comes from abroad, according to the Bureau of Mines. So this country is a part of the global market as a result of political choice and logistical necessity. We couldn't manage without the other folks, even if we wanted to.

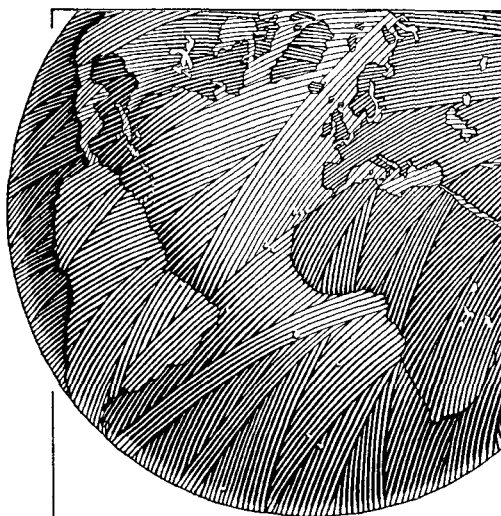
In the past decade the major force drawing the world closer together has been technology. It has made possible not only rapid travel, but near-instantaneous transfer of funds, know-how, and culture to the four corners of the world. Electronic impulses send tidal waves of money washing around the globe, leaving pools in areas of attractive potential, followed by new industries, new jobs, and new prosperity. In jungle villages in Indonesia where only a few years ago people were close to the Stone Age, they're now wearing blue jeans, listening to rock and roll, buying new VCRs for their TVs, and eating fast food. This may not seem like an unmitigated blessing to us, but it's certainly a change for the better for the people who were living in primitive poverty and isolation.

There are many other, perhaps clearer, benefits stemming from the trends I have mentioned. These include the evolution of a rich and diverse world market, overflowing with goods and

services, readily accessible, and at competitive prices. Think about this for a few seconds. What you're wearing and where it came from, the car you came in, the food in your fridge, maybe the fridge itself, your TV, and maybe your favorite program on PBS—the inventory is very international. Never before has so much been available from such a variety of sources, and within economic reach of so many people. This is true not only in this country; it is increasingly true of many other countries, where consumer buying power is rising in the wake of industrialization.

Of course, there's a price to be paid for these blessings. The United States has lost the advantages that naturally accrued to it after World War II, when the rest of the world owed us money, when we had what was probably the only remaining vigorous and undamaged industrial base, and when we were the undisputed technology leader. Today, dynamic industrial economies that arose out of the ashes of World War II have overtaken us, and new industrial economies are flowering around the Pacific Rim. Money and know-how are widely available, almost anywhere in the world. And if performance is judged solely by trade surpluses and deficits, and by who owes how much to whom, we would have to admit that America is in sad shape.

By these yardsticks money and know-how are being used a lot more effectively by others. It's tempting to blame those others for our current problems in international trade, and to suggest that the rich variety of goods and services being offered to us from all over the world is the root of the problem. The real problem, of course, is that we are not selling enough of our own goods and services in the world marketplace.



In short, we are now in the position of *having* to compete on more or less equal terms with other nations, but the evidence suggests that we are not yet prepared to compete to the degree necessary, or to adjust our attitudes and policies to reflect the loss of our former privileges and advantages. There is absolutely no doubt in my mind that if the United States really made a concerted effort to turn the trade deficit around, we could do it, and probably be surprised at how quickly. However, it's no easy task to prevail upon an *ad hoc* committee of 240 million people to focus on such arcane problems as trade deficits, particularly when most members of that committee are enjoying unprecedented personal prosperity. Indeed, as we approach the 60th month of one of the longest economic expansions that America has enjoyed since we began keeping these kinds of records in 1854, we do seem to be well-served. But I'm sure we all have our doubts as to how long we can keep on piling up trade deficits and debts without rupturing the system—doubts demonstrably shared by Wall Street earlier this month.

The fact is, the problem of relative performance in the world market means different things to different people. To the average American, this nation's lack of ability to compete is less worrying than how he or she can meet the mortgage payment, although these two factors may be related.

To those in government, the problem is measured in trade deficits, borrowing needs, interest rates, and the value of the dollar in relation to other currencies.

To a company such as Du Pont, it's all these things. The survival of the company as we know it depends on our ability to compete effectively in world markets. In this sense, the challenge is

as unequivocal as meeting the mortgage payment. Mainly, the outcome is up to us. But we're helped or hindered to a considerable degree by the actions of government in a wide range of areas including fiscal and monetary policy.

Business has responded to the challenge in time-honored fashion. It has seized upon a buzzword, "globalization". Congratulations are in order for whoever came up with the word, because business thinking and planning on a global scale are *exactly* what we need in this country.

At Du Pont, we may not take the term terribly seriously but we do take the concept *very* seriously indeed. We did agree that we needed to put a label on our own concept of a global business strategy, and, yes, we did embrace the word "globalization". We also recognized that the word itself means different things to different people. Here's how we have defined it for purposes of discussion within our own management. I quote:

"Globalization is the effective deployment and utilization of worldwide resources, including human resources, matched with opportunities, across national boundaries, to achieve competitive advantage and superior business results."

Translated into action that means Du Pont is developing global strategy for research and development, manufacturing, and marketing for all major businesses, instead of having master plans with the U.S. at the center and the rest of the world as an appendage.

I believe it is true to say that just a few years ago the traditional view in most American industries was that overseas markets were incremental and/or opportunistic. In other words, if a company had products that were salable overseas, that company might let the overseas market have some of its wickets. But products were very seldom developed for specific overseas markets. American manufacturers did not tailor products to suit foreign market needs, tastes, or styles. Regrettably, this is still true to some extent.

By contrast, the trading partners about whom we tend to complain the most, because of their trade surpluses with us, are the ones who most carefully study and cater to our needs and desires. The point is, foreign industries have wooed and pursued American buyers, while American industries selling overseas

have had, by and large, a "take it or leave it" attitude. This attitude has changed somewhat in recent years, but not soon enough or to the extent necessary to make a dent in the trade deficits.

You know, at Du Pont we have been multinational for a long, long time, in the sense that we do business in many countries. But being multinational is not the same as being globalized as we define the word. In the past, our approach has been basically opportunistic, as Dick Heckert, our chairman, has pointed out. We began by selling our products overseas as and when the opportunity arose — and we were multinational in this respect 'way back in 1805. In response to market demands, we followed up by establishing service facilities overseas in support of the products being sold. And we did establish manufacturing facilities where this was necessary to gain market share or to avoid import restrictions in those countries that we considered attractive.

But by and large we were not planning on a global scale. We were planning as an American company with overseas interests. This not intended as a criticism. Our U.S. planning posture made perfect sense at a time when most of the growth opportunities were here in the United States, when there was little competition in foreign markets, and when we could more or less just pick the markets where we wanted to sell our highly desirable products and just go ahead and do it.

Things are different today. The competition is hot. For many of our products, the markets of greatest potential growth are not in the United States, but overseas. In fact, Du Pont's overseas businesses as a whole are outpacing growth in our U.S. markets. Overseas sales already account for more than 40 percent of our business, and this number will be up to 50 percent within a few years.

I don't think I'll be giving away any corporate secrets if I tell you we're looking at how we can round out our product lines in the 50 countries where we already have operations, and how we can expand into new markets — including mainland China. We're also looking to create full-service operations where this would be advantageous, and establish business teams with worldwide scope and responsibilities.

Under this team concept, the leader of each business would be headquarter-

(Continued on next page)

Global Village (continued)

tered in the country with the leading market. In any case, he or she should be as close as possible to the market. Thus, we would be in a better position to foresee trends, capitalize on opportunities, and serve customers. This is globalization at the grass roots — getting our facilities and our people close to the customer, wherever that may be.

So far I've talked about the need for globalization in general terms. Now let's be more specific. I'm on safe ground here because these specifics have already been enunciated by the chairman of the board. There are many reasons why globalization is necessary for Du Pont. Here are six of the most important:

Pressure from governments. Some governments offer investment grants, tax breaks, and other preferential treatment for companies that manufacture locally, and sometimes penalize those that don't. Some insist on having a certain percentage of local ownership of the overseas subsidiary.

Customer preference. In some cases our customers insist on having a local source of supply and full technical support.

Competition. Our competitors are ready, willing and able to provide local sources of supply and full support services almost anywhere in the world. Failure to compete with them on these terms would be like giving up without a fight. It would be like throwing in the towel in the markets in question. And there is no way we would pull out of world markets, because this would undermine our entire cost base and leave us at a competitive disadvantage not only overseas but in our U.S. markets as well.

Logistics. One of the bones of contention about globalization is that it sometimes entails operating manufacturing facilities outside of the United States. Often, common sense leaves no choice. Let me give you an example from my experience with our oil business. We have crude oil production in the North Sea, an oil refinery on the North Sea coast of England, and a com-

bined U.K. and Western European market on the doorstep. This combination of raw materials, manufacturing facilities, and proximity to customers helps us compete in a market with a population of 350 million and a GNP of some \$4 trillion.

Technology transfer. Being close to all our markets keeps us in touch with the new technologies that are being developed, not just in the United States, but in many other countries as well. We need to be where the action is in order to stay at the leading edge of technology in all our businesses. Technology transfer really is a two-way street nowadays.

Currency values. Globalization helps balance the risks associated with periodic misalignment of currency values.

The bottom line here is that it will be virtually impossible to be a major force in the U.S. market, or any other single national market, without having a broad, multi-market, multinational base over which to spread the high costs of research and development and overhead. Du Pont is competing with companies that do have a wide geographic spread and can therefore enter the U.S. market on a very cost-competitive basis.

This sounds cut-and-dried, but we've had our problems with the globalization concept. We don't have all the answers, but we have had to work a few things out, including some typically American psychological problems. We've had to adjust our view of the world and, to some extent the way we feel about ourselves. We've had to balance strong feelings of national pride with the understanding that other people are as smart as we are, and maybe smarter in some things. We've had to recognize that in some instances it is better to build a plant overseas to serve a specific market than to lose that market altogether.

We're almost fanatical about proprietary information. But we also know that we can add to our knowledge by some selective give and take. We cannot afford to ignore what is going on in the rest of the world or we will fall behind in the technology race, and if we do that we fail ourselves and our country. We are already globalized in research to the extent that we now have technical centers in Europe and Asia.

So these are some of the things Du Pont is doing in response to global competition. Other U.S.-based companies of similar size probably will be under-

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taking similar measures, if they don't already have global strategies in place, because the trend is inevitable — dictated by economics, technology, and logistics.

Perhaps you'll agree that Du Pont is doing a good job in responding to the challenge of international competition when I tell you that we exported \$2.6 billion worth of products from the U.S. last year, while our imports — mainly raw materials — totaled \$800 million. This gives Du Pont a U.S. surplus in international trade of \$1.8 billion.

Now I won't read the full laundry list of what business wants government to do to help the *nation's* competitive position in world trade, because anyone with an interest in international business is surely familiar with the litany. Sufficient to say that the United States continues to be severely handicapped by the lack of balance between fiscal and monetary policies, which creates budget deficits, increases debt, and adds to the cost of money. And we still don't have equal access to other markets or a level playing field at home. If Congress were really serious about our trade position, every piece of legislation would be considered at least to some extent in light of its potential effect on America's competitive position. Policies should be viewed in the same way.

How society as a whole responds to the challenge will determine our right to a future of economic prosperity.

Energy is a case in point. Petroleum imports probably will add up to about \$40 billion for this year as a whole. This is major money, even when compared with the overall trade deficit, which is estimated at \$165 billion. To what extent do government policies contribute to the energy component of the trade deficit, by hampering production and use of U.S. energy? Congressional opposition to oil leasing and restrictions on the use of natural gas are two negative factors that come to mind.

I'm not suggesting the equivalent of a trade environmental impact statement as a precursor to any and all legislation, but simply that the larger picture should be considered. In short, our elected representatives need to acknowledge — like Ethel Merman in the musical "Gypsy" — "small world, isn't it?" and develop an appropriate global perspective.

And *all* of us, business, government, parents, grandparents, children — all components of society — must wake up to the dangers of an under-educated population. We need to stop worrying about such things as whether Beatrix Potter's children's stories need to be rewritten to make them more "relevant" and focus on the real problem, which is that many high school students and even some high school graduates couldn't read Peter Rabbit no matter how it was written. People who are not functionally literate cause terrible problems in the workplace, in terms of productivity and safety. Workers who cannot read warnings are walking hazards.

It is *not* the proper role of universities to provide remedial reading and writing. Yet, unless much greater progress is made at the high school level, we may reach a point where the bachelor's degree replaces the high school diploma as evidence of competence in the fundamental skills. The problem is exacerbated by the increasing complexity of our technological society, and by the fact that we are an aging nation, which suggests a future tight supply of competent people of working age.

These issues properly are topics for other discussions, but they obviously do have a bearing on America's ability to compete successfully in the global village.

Now let's look in the assets column, before we get too depressed. Actually, the assets could certainly more than outweigh the debits if they were exploited effectively. For example, we have a large and rich market, which other people are always trying to enter. We could more aggressively use access to this market as a lever in negotiating fair play and equal access issues with our trading partners. Furthermore, we are still the leader in R&D investment and in entrepreneurial skills, we have a stable democratic capitalist system that continues to be a haven for world investment, and we have a powerful economy. So far.

Also, there is another side even to the education issue. One reason why we're not getting a good crop of job market entrants from high school is that a greater proportion of people are going on to college. This may well mean that in the future there will be more blue-collar baccalaureates. I've even heard of Ph.D.s who paint houses for a living. That's great — but maybe it's *not* the



Wilfred P. Schmoe, Executive Vice President of the duPont Company, was formerly Vice Chairman and Chief Operating Officer of Conoco, Inc. His credentials for discussing international trade are impeccable: in 1975 his career with Conoco took him to London as Executive Vice President of Conoco North Sea. He was elected Vice President for International Production in 1980 and returned to Houston, Texas. He became a Chief Operating Officer of duPont and a member of the duPont Board of Directors in May, 1983.

most cost-efficient use of educational resources.

Of course, if America is to remain affluent, we're going to have to do better than this. We're going to have to make more effective use of all our assets, including the high school system.

We could talk about these interrelated problems all night. I believe I've spoken long enough to at least provide some points for discussion. Let me sum up quickly with the observation that global strategic planning by some companies is a positive response to the challenge of international competition, but it's only one aspect of the picture. How society as a whole responds to the challenge will determine our right to a future of economic prosperity. Perhaps the biggest challenge for Americans will be to adjust to the fact that we must re-earn our affluence, on more or less equal terms with the other people who inhabit this shrinking planet. This is the price of membership in the world market. ■

Streamlining Commerce

Ben L. Irvin

The Harmonized System

Our special issue editor sat down with Ben Irvin to discuss a promising new device for easing some of the difficulties traditionally associated with the conduct of international trade. That discussion, cast in question and answer form below, alerts us to what promises to be a significant change and improvement.

Ben Irvin, who maintains offices in Washington and in Silver Spring, Maryland, is a highly experienced international trade and customs attorney. His previous service with the U.S. Department of Commerce, the U.S. Customs Service, the Executive Office of the President, and the Treasury Department give him a depth of knowledge essential to this intricate branch of the law.

What is the Harmonized System?

The Harmonized System (HS) is a complete product or merchandise classification system. It employs a numbering or coding system consistent with its organizational arrangement. It provides manufacturers, transporters, exporters, importers, Customs, statisticians, and others with a multipurpose system for classifying goods moving in international trade under a single commodity code. In effect it is the international bar code for merchandise moving in international trade.

Why is the Harmonized System needed?

There are many obvious drawbacks to not having a common system:

1. Traders, commercial interests, and government are unable to cross compare trade statistics and tariff rates.
2. Under the present system as merchandise moves through international trade, one shipment of a commodity may be described as many as 17 times.
3. Multiple classification systems result in errors that affect the quality of statistics, correctness of customs, and freight tariffs, etc.
4. The different systems make it costly, as well as difficult, to verify and correct commodity coding errors.
5. Different classification systems make detailed comparisons difficult and complicate international trade negotiations.
6. The electronic transmission of data is hampered.
7. The movement of goods can be delayed.

Who will be able to use the HS?

While it was developed primarily for Customs purposes, it takes the interests of others into account. It is intended to serve as a "core" system, which can be used "as is" or expanded for specific uses (tariffs, freight rates, statistics, etc.) by anyone engaged in international trade.



Ben L. Irvin

Would you provide some background on the development of the Harmonized System?

For years, the trading community and governmental analysts have been struggling with the different classification or nomenclature systems, for goods moving in international trade, depending on where they go and whether they are imported or exported. This has complicated the preparation of customs and transport documents, impeded wider use of electronic data processing in transactions, hampered analysis of trade data, and created uncertainty in the negotiation and interpretation of trade agreements.

The explosion of world trade in the 1960s and the growth of computerization in international commerce reinforced the demand for a single global classification system. In 1970, the Customs Cooperation Council (CCC) sponsored a study for a universal system and found that such a system was feasible and essential. At a meeting of the Economic Commission for Europe, it was agreed that the CCC was the organization best suited to study commodity description and coding with a view to developing a system sufficient for the requirements of customs authorities, statisticians, carriers, and producers.

Since 1973 the CCC has been developing the "Harmonized Commodity Description and Coding System," more commonly known as the Harmonized System. It has been designed as a comprehensive up-to-date system for customs tariffs, statistical, and perhaps for transport documentation purposes.

(Continued on page 20)

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Streamlining Commerce (continued)

The United States Government has been active in the development of HS under section 608 of the Trade Act of 1974, and U.S. private sector groups have participated in the international work on the system. All draft chapters have been made available for public comment. Sixty countries, fourteen government international organizations, nine private international organizations, and two national trade facilitation organizations have participated.

When does HS go into effect?

The target date is January 1, 1988, but Congressional approval must be obtained first. Unfortunately, the Harmonized System proposal is mired in the legislative process along with the Omnibus Trade Bill (H.R. 3).

As of early December 1987, U.S. manufacturers, importers, and exporters began a last minute effort to pass a uniform tariff classification scheme, independent of the trade bill. This would necessitate removal of the Harmonized System provision from the trade bill, and separate Congressional approval. Business groups, such as the national Association

of Manufacturers, the Chamber of Commerce, and the Joint Industry Group (on customs matters), have sent letters to committee chairmen to exert pressure for expeditious action.

Failure to pass the Harmonized Systems by January 1, 1988 could cause problems. First, it could lead to cargo back-ups at U.S. ports as paperwork for imports arrive with the new HS classifications that the U.S. would not be using. Second, U.S. business could bear a heavy cost if it must keep, or use, two separate and distinct classification and statistical records to reflect the U.S. system and the new international, or HS system.

Will adoption of the Harmonized System change duty rates?

If you ask the government authorities (e.g. Customs, International Trade Commission, and Special Trade Representative) they will tell you that the adoption of HS will be as rate neutral as possible. In a few instances, however, duty rates may increase slightly but some will be reduced. When two or three distinct duty rate provisions are collapsed into a single duty rate item, some rates will rise, others will fall, and some probably won't change. An importer will be pleased with a "windfall" rate reduction

but be very upset with an unwarranted rate increase merely for the sake of "harmonization."

The real answer to the duty rate question is that the result depends on a variety of factors, including industrial sectors, product composition, etc. My first recommendation to any importing company or corporation would be to obtain a binding classification opinion from the Customs Service. In the August 25, 1987 edition of the *Federal Register* (52 Fed. Reg. 32092), the Customs Service announced that, beginning immediately, tariff classification rulings issued to the public upon request under the provisions of Part 177, Customs Regulations (19 C.F.R. Part 177), will contain binding classification under both the current TSUS and the HS.

Second, there is a major philosophic or interpretative change from the TSUS to the HS. The general philosophy behind TSUS is that the "chief value" of an article controls its classification. Under the HS, classification will be determined by "chief weight."

Let us assume that you import a "widget" which is by value 51 percent steel and 49 percent gold. Under the current tariff schedules, this widget would be classified as a "steel widget." However, if this same widget by weight is 51 percent gold and 49 percent steel, under HS it would be classified as a "gold widget."

What are the benefits of HS?

The HS will facilitate the classification of goods because the international six-digit classification code will be placed on commercial documents. The HS in effect creates a common tariff language. The United States and its trading partners will be using the same tariff language through the first six digits of the Harmonized System commodity codes.

The use of the same code for imports and exports, as well as transportation purposes, will save considerable time and money because goods will not have to be re-coded and re-described as they move from country to country, and from system to system in commerce. Use of HS will also increase the accuracy of international trade statistics, making it easier to compare trade data, increasing certainty and understanding in international trade negotiations, and simplifying the verification of product classification. Use of HS will allow use of standardized international forms, which will make paperwork easier and more precise.

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What are the disadvantages and potential problems with the Harmonized System?

Any new system that will broadly affect traditional business and government practices will create disruption, discontent, and expense. This is especially the case when the new system supplants known systems that work and adequately meet many needs. The Harmonized System replacing the Tariff Schedules of the United States (TSUS) is no exception. There will be start-up problems in training, disputes and test cases, and conversion costs.

TRAINING. The retraining requirements for government and industry participants have been, and will continue to be, herculean. Thousands of importers, exporters, attorneys, customhouse brokers, freight forwarders, and traffic managers will have to learn not only an entirely new code, but the rules of classification or interpretation under the new system, and so will governmental authorities.

CONVERSION COSTS. HS will require republication of tariff codes, and the rewriting of regulations, proclamations, internal instructions, public publications, corporate procedural manuals, etc. Of no less importance, reprogramming automated data processing systems will be extremely expensive for private industry and government. The documentation and data processing issues permeate every aspect of international trade: commodity codes are usually a primary reference key to most trade information sources.

DISPUTES AND TEST CASES. Classification questions will arise from confusion caused by the new rules, new interpretations, legitimate differences of opinion, and from test cases to seek avoidance of tariff levels, quotas, textile categories, etc. There will likely be an explosion of ruling requests during the first years, which will consume the energies of government agencies, international organizations, and industry officials.

LOSS OF HISTORICAL TRENDS. Conversion to the Harmonized System will mean building an entirely new statistical data base that cannot be accurately compared with existing historical data. The ability to isolate trends and fluctuations in trade is a major analytical tool. It will be lost until a new historical base develops.

Will there be any increase in taxes owing by U.S. corporations because of changes in classification?

As you no doubt know, Customs charges are called "duties" rather than taxes. Customs collects for other governmental agencies certain taxes, such as Federal Excise taxes, and internal-revenue taxes on beer, wine, and distilled spirits. The issue of duty rate changes will be the subject of a separate question. However, if one is interested in possible tax changes due to Customs related activities, a prudent lawyer or corporate counsel would be well advised to study a recent (September 3, 1987) notice of proposed rulemaking published in the *Federal Register* (52 Fed. Reg. 33427-33431) concerning income taxes — limitation on taxpayer's basis or inventory cost in property imported from related persons. Basically, Code Section 1059A provides that a U.S. taxpayer who imports property into the U.S. in a transaction (directly or indirectly) from a person or persons related to the taxpayer, within the meaning of section 482 of the Code, may not claim, for purposes of computing the basis or inventory cost of the property, a greater cost than the amount of the cost taken into account for customs valuation purposes.

When will copies of the new tariff schedule be available?

Immediately. You can obtain a copy of the "Harmonized Tariff Schedules of the United States Annotated for Statistical Reporting Purposes (HTS)" by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 and enclosing a check for \$56.00 for mailing within the United States.

The November 1987 edition contains the legal text of the Harmonized Tariff Schedules of the United States. However, until the HTS is enacted into law, this edition of the HTS is being published without an effective date.

The HTS has been annotated to include such matters as may be necessary for reporting statistics formulated pursuant to section 484(e), Tariff Act of 1930, as amended (19 U.S.C. 1484 (e)). The statistical annotations contained in the HTS prescribe the statistical information to be supplied on customs entry and withdrawal forms with respect to articles imported into the customs territory of the United States. Thus, this publication is designed to enable importers, customs brokers, customs officers, and

other interested persons to determine (1) the classifications and rates of duty applicable to imported articles and (2) the requirements for reporting statistical data with respect to such imports. This publication may also be used in place of the reporting codes of Schedule B for reporting exports on the Shipper's Export Declaration or under the program for electronic reporting of exports.

Can you make cross comparisons between the Tariff Schedules of the United States Annotated (TSUSA) and the Harmonized Tariff Schedule of the United States (HTS)?

Yes. The U.S. International Trade Commission (ITC) is preparing a cross-reference to facilitate the United States' expected ratification of the harmonized system, an international standard of six-digit classification codes designed to make tariff nomenclature uniform worldwide, on January 1, 1988. The ITC will also compile statistical tables for U.S. import and export trade for the years 1983-1987 using the proposed eight-digit HTS subheadings and ten-digit Harmonized System-based Schedule B numbers. ■

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Global Competitiveness in the 1990s

In which the author reports on recent speeches at the University of Delaware by three knowledgeable practitioners of international trade.

Lesley Ann Suddard



Lesley Ann Suddard is well prepared for the rigors of a global economy. A chemistry major with a minor in business administration, she graduated in January from the University of Delaware. She is literate in computer science, fluent in Spanish and French, and experienced as a paralegal. She has studied medieval history in France and general education at Duke University. Presumably she is the sort of renaissance type who must confront the uncertainties and perils of our national future.

□ BJORN BAYLEY, President IKEA, North America

Unless one has lived the life of a hermit for the past three years, there is no way he could have missed the American debut of IKEA, the Swedish home furnishings retailer. The Plymouth Meeting Mall "hypermarket", a store offering only one category of products, has been a smashing success. Sales have surpassed all expectations by a wide margin. IKEA N.A. president Bjorn Bayley said that "We should sell furniture of good quality and design at prices so low that most people can afford to buy it." Evidently, most people in the Delaware Valley (and around the world) can and do.

IKEA operates in 18 countries, including the United States, Canada, Iceland, Europe, Africa, Singapore, and Australia. IKEA stores are mostly company owned. Only those located furthest from Sweden operate as franchises. "Prosumerism", that is making the consumer part of the production process, is the basis for IKEA's competitive strategy. IKEA does not do any of its own manufacturing or transportation. "IKEA is not in the business of shipping air around the world," says Bayley. Most IKEA furniture is shipped in flat boxes and requires some assembly by the consumer. In this way IKEA keeps prices down by reducing production and shipping costs. Although ninety percent of all items sold are designed in house, IKEA contracts with outside manufacturers to produce and to ship the finished product to IKEA distribution centers. IKEA, a retailer only, leaves the headaches of manufacturing and shipping to specialists and concentrates on marketing and selling.

The annual catalog, the heart of IKEA advertising, accounts for approximately 50 percent of the total marketing expense. Studies suggest that 58 percent



Bjorn Bayley

of those receiving their catalog keep it for three months or longer. Because the catalog binds prices for a year, IKEA tries to negotiate contracts with manufacturers at fixed prices for a year as well. To hedge against exchange rate fluctuations, IKEA buys futures in foreign currencies for a year at a time.

While the catalog is the primary tool for attracting people to the stores, the stores themselves are designed so that, according to Delaware shoppers, the merchandise "...falls off the shelves and into the shopping cart and out the door." Since IKEA's target market is families with children, it provides free babysitting and diaper-changing services, and a children's menu (including baby food and formula), allowing parents more time to shop.

On the sales floor, products are displayed in room settings, both to show different possibilities for furniture use and to provide decorating ideas. IKEA sells everything shown in their displays (except the appliances and electronic equipment), including fabrics, floor coverings, wall hangings, lighting, even

house plants. The price tags attached to the display furniture tell the customer just about everything that IKEA knows about the product: materials used, durability and recommended frequency of use, and package size and weight. There is a central information desk where additional questions can be answered, and where furniture too large to be handled in the self-serve warehouse bins can be ordered. Home delivery is available as well as assembly services, something particularly useful for business customers. IKEA charges separately for these specialized services instead of spreading the costs among all customers for services used by only a few.

There are other companies with self service or knock-down furniture stores, but no competitor has been able to duplicate the strong customer identification and recognition accorded IKEA, primarily because IKEA emphasizes its Swedish origins while promoting a "global village" marketing strategy. All items are available in all countries and catalogs are printed in the local language or dialect.

In many ways, IKEA is a victim of its own success. It is strapped for warehousing space, and customers have found many items out of stock, often for months at a time. Increasing the number of distribution centers to ease current supply shortages is crucial to IKEA's North American expansion plans, as is finding motivated and qualified workers.

A company with a corporate style that can only be described as casual, IKEA is nevertheless an impressive competitor, unwilling to overanalyze or get bogged down in details, lest a competitor beat it to the marketplace. For IKEA, speed as well as quality and prices, will determine who succeeds in the 1990s. ■

□ HARRY CORLESS, Chairman ICI Americas

Harry Corless, Chairman of ICI Americas (the American subsidiary of the English company, Imperial Chemicals), describes himself as a "total, absolute, unfettered, unambiguous advocate of world trade and free trade." He claims that the world as we know it today was discovered and developed by the drive to establish world trade.

International trade has had benefits beyond the merely material. Corless states, "International trade is the catalyst that has helped this interchange of goods,



Harry Corless

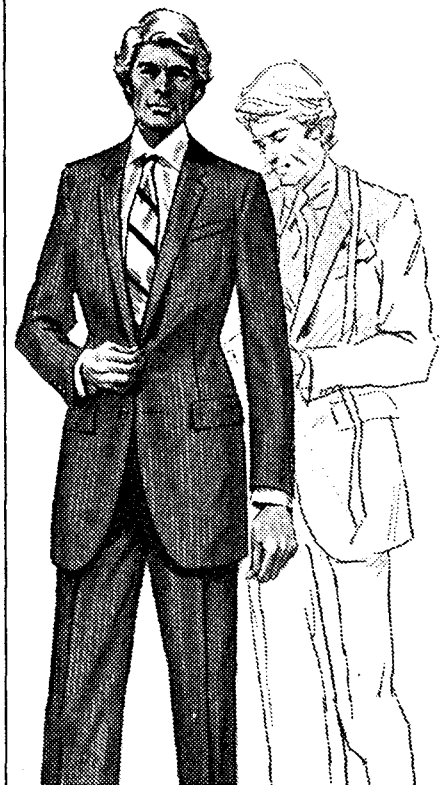
ideas, and cultures. It's the cement that holds international relationships together. And, in my view, this increasing dependency and interdependency of the world's nations is the most important single means of insuring a peaceful coexistence and avoidance of another major holocaust." He contends that economic factors have been a major cause of wars. The healthy global trade today shows that there is still a lot of trust between trading partners, as well as a lot of prosperity being created around the world.

The United States is facing significant challenges. Corless claims that a slowdown in productivity has resulted in American manufacturers becoming less competitive world-wide. Although U.S. manufacturers complain about "level playing fields", he feels that if they first took care of improving their own productivity and competitiveness, many of the problems would disappear. He is greatly troubled by the current pressure within the United States for increased protectionist legislation, citing the harm inflicted by the 1930 Smoot-Hawley Act.

Corless prescribes a simple regimen for United States manufacturers in pursuit of recovery: concentrate on "managing business properly, improving efficiency, effectiveness, and productivity, and being competitive in that way." He chided American management for its exaggerated concern over protecting its own backyard, even though the U.S. market is 30 to 40 percent of the entire world market.

Corless points out that ICI is based in a market (England) with only five percent of the world market. Founded in 1926, ICI concentrated on the U.K. market until 1971, when it acquired the Atlas Chemical Company in Wilmington and

(Continued on next page)



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Global Competitiveness (continued)

set up U.S. operations. In 1980 the company experienced the worst year in its history, because of problems in the chemical industry and problems peculiar to ICI, mainly over-dependence on a slow-growing U.K. economy and the collapse of the U.K. customer base. In two years, ICI redefined its markets and objectives and built a technology to meet market demand. It also relocated staff to be closer to customers, enabling them to respond more quickly and effectively to customer needs. Result: ICI's return on investment has increased 185 percent since 1980, and return on sales has increased from 4¾ percent to 10½ percent.

Corless insists that if ICI could do it, so could any U.S. company, as long as it "recognized the world contains more than the United States of America." ■

□ ALEXANDER GIACCO, Chairman, HIMONT Incorporated

"If I were nervous, I'd not be working in a bank or the service economy," says Mr. Alexander Giacco, retired chairman of Hercules, Inc., and current chairman of HIMONT Incorporated. He explains that the Japanese have set their sights on acquiring the high standard of living that the United States enjoys. Today 49 percent of the U.S. economy is service-oriented and the Japanese have targeted the service industry to attain that standard of living for themselves.

Giacco states that the U.S. has entered a fundamentally different era, one which is driven by the realities of a world marketplace and by the consumer. "Planning is important," he said, but "a successful planner sees the world as it is, not as he would like it to be."

Giacco claims that global competition is the pursuit of the better lifestyle. Competition in the world marketplace simply means that the winners will live better. "One of the frightening things is that people want to know how to borrow money to live better than those they



Alexander Giacco

borrow from." He is disturbed by the complacency among some people who say "Well, we're not worrying about the Japanese, since they're coming over now and building their plants here." Giacco says that he has worked in factories and in corporate offices, and, "The pay is much better in the corporate office. I mean *much* better. You can live much better if you're running companies than if you're working in factories."

HIMONT's chairman firmly believes that the building of foreign factories on United States soil is only deferring the final outcome of the balance of trade problem. The answer is instead for the United States government to emphasize and encourage the high tech industries that will provide the key to higher earnings and a better life style. ■

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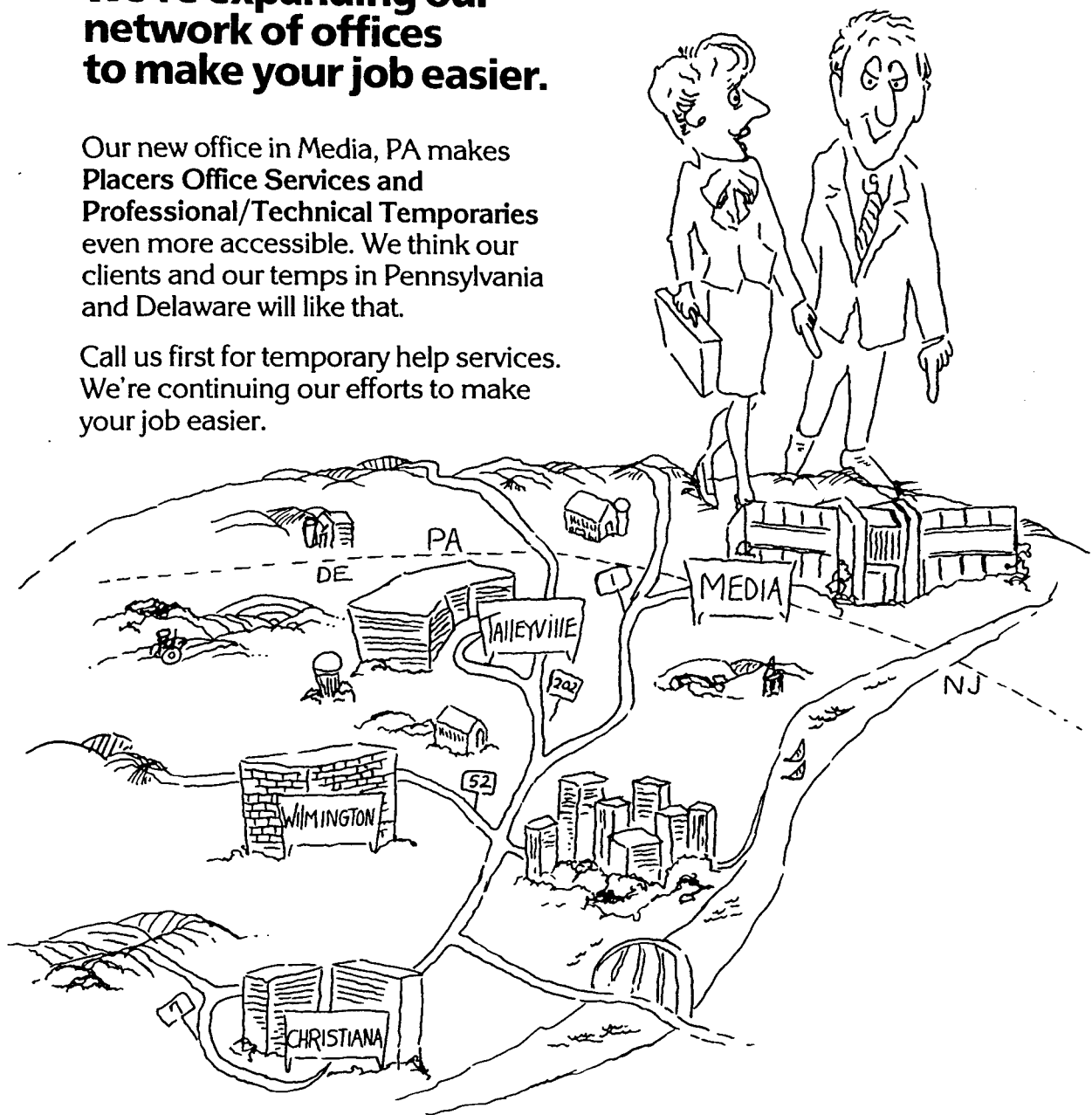
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The Delaware Role In International Trade

The Honorable Andrew G. Knox

Delaware is playing a key role in international economic development, foreign investment, and overseas trade. The Federal Government determines broad policy, but most investment and economic development decisions are made at the State level. This increasing responsibility and effectiveness results from greater competence and closer contacts. Most important, Delaware has developed a "hands on" capability to help small business exporters.

Before elaborating on the role of the states and of Delaware in particular, I should like to emphasize a critical responsibility—the need to address the Federal Budget Deficit. Most economists and political scientists agree that it is the prime reason for the recent instability in world-wide financial institutions. It is directly related to the trade deficit and other major problems. Our basic economic health and standard of living are threatened and we must insist on real progress. The plunge in the stock market has caught our attention and now we must devote our energies to this fundamental problem.

We have not done a good job in educating the general public about the relationship of the budget deficit to economic prosperity. We have also failed to convince people that we live in a global economy. The domestic market is so large and export problems so difficult that most small business people see no reason to be competitive.

From a long-time perspective as a state legislator I have seen the evolutionary assumption by the individual states of key roles in international and foreign development. The executive and legislative branches have not moved at the same rate but they have both made significant progress. Together they can enact significant legislation and devise effective programs for an increasingly complex world. Most important, budget

and economic progress has been made. For example, there is the funding support for education, social programs, economic development, environmental protection, and infrastructure improvement.

There are specific advantages in local measures: the state can act at the community level in close coordination with the private sector, taking a more precise "rifle" approach, as opposed to a "shotgun" approach. For example, government and industry can examine more effectively at the local level general market factors, such as the region with the strongest potential for a company's products or services, transportation and distribution of projects by road, rail, water or, air, and the means of reaching major metropolitan areas. Other important questions are more readily answered: How dependent is a company on the developed business infrastructure within the region or state? How can it best satisfy energy requirements? Can raw material requirements be economically satisfied within the region? What are the cost of land and buildings? Is requisite labor required by the company readily available locally?

I shall discuss further on the program of the Governor's International Trade Council (GITC) and the Delaware Development Office (DDO). But first a word about these goals.

Specific Objectives

- **Trade Council:** to strengthen the Council, increase its effectiveness, and to be recognized as a focal point for the international trade activities in Delaware and eventually, the region.
- **Trade Expansion Sub-Committee:** to increase trade in agriculture, industry, and services.
- **Trade Marketing Sub-Committee:** to develop international markets for Delaware agriculture, industry, and services.
- **Related Organizations:** to work with the Delaware General Assembly, the

Delaware Development Office, Delaware Department of Agriculture, Chambers of Commerce, U.S. Department of Commerce, Federal Government, and, indeed all levels of government.

Program Elements

- **Financial Services and International Banks:** The GITC and DDO have developed the "Foreign Banking Marketing Plan" and major legislation for attracting U.S. subsidiaries and agencies of foreign banks to Delaware. Direct contact has been made with almost 50 of the world's largest foreign banks from major trading countries. As a result, Barclays Bank PLC opened Delaware's first foreign bank agency in the Fall of 1984, while discussions with several other banks continue.

- **Shared Foreign Sales Corporations (FSCs):** An FSC is a foreign subsidiary of a U.S. corporation established for the sole purpose of receiving a 15 percent tax exemption on gross export profits. State-sponsored shared FSCs greatly simplify the process by which exporters qualify for the tax exemptions (Federal and Delaware), and the sharing of operating expenses of FSCs by up to 25 unrelated exporters, minimizes the cost to each member. Start-up of the first DSFSC has been delayed by refusal of IRS to clarify the tax treatment of shared FSCs. Price Waterhouse has therefore decided to withdraw all ruling requests and pursue classification as quickly as possible under the pending technical corrections bill. We now look for start-up of the first DSFSC in early 1988 and expect ten to be operating by 1989.

- **Insurance:** The GITC and DDO are working with the Insurance Commissioner's Office to attract foreign owned insurance companies to Delaware. Targets include those companies legally domiciled in Delaware but lacking a more significant presence.

Trade Promotion

- **Exporter Assistance:** "One-stop" counselling and a full-blown exporters' assistance program were announced effective July 1, 1987, featuring direct help to new-to-export companies as well as to current exporters attempting to expand sales overseas. This program is managed by DDO and relies heavily on resources of the U.S. Department of Commerce, the National Association of State Development Agencies (NASDA), other public and private sector agencies, and two consultants. The program pro-

vides counselling, exporter education, acquisition of overseas distribution, and marketing assistance. Several companies have already requested assistance. Priority programs include preparation of an export data base, a mailing list, and an exporter directory, which will be published around year end.

• **Export Trading Company:** Legislation establishing Export Trading Companies has passed and the First State Trading Company incorporated. Plans to start a state sponsored export trading company are underway. Central to such an undertaking are the availability of trade finance and a suitable product/market base with the prospect of increased traffic for the Port of Wilmington. Since the Port is serviced by only one steamship line operating on a regular, weekly schedule to and from Costa Rica, we are seeking commodities and markets capable of generating a volume of traffic sufficient to justify dedicated shipments to and from the port. We are currently pursuing two such leads, either of which could result in a noticeable impact on Port of Wilmington traffic.

• **Trade Mission, Fairs, and Conferences:** DDO will identify Delaware businesses that produce goods for potential export to those countries that buy directly from U.S. suppliers. Thus far information about visits to the U.S. by purchasing delegations from Taiwan and Korea to the U.S. has been disseminated to a select group of Delaware businesses.

Two international events on which both the GITC and DDO worked are a Delaware Global Trade Conference on October 21, 1987 (six countries) and a seminar, "Doing Business With Dubai", on November 3, 1987.

Also, on November 18 the Swedish Ambassador visited Delaware to address the Maritime Society and to participate in a trade conference. Finally, plans are underway to celebrate World Trade Week in May, 1988.

• **Overseas Representatives and Consultants:** Our limited program here (one representative in Europe) will be expanded.

Physical Facilities

• **Foreign Trade Zone:** DDO will continue administration and promotion of the Delaware Free Trade Zone. There are presently two companies operating in FTZ #99 general purpose zones at the Port of Wilmington and Wyoming, Dela-

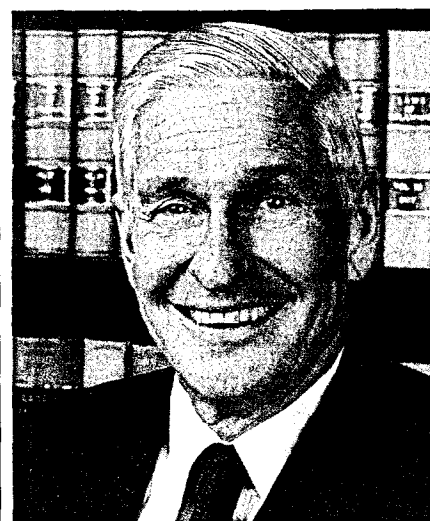
ware. In addition, there are two sub-zones: Chrysler and Wiltex.

• **Invest in Delaware:** This plan will identify and match source countries with targeted industries to persuade foreign-owned companies and foreign nationals to locate and invest in Delaware.

• **World Trade Center:** Delaware is now a registered member of the World Trade Centers Association. Eighteen programs are being developed for the Delaware World Trade Institute. Funding is being sought for the World Trade Center building, and we are quite confident of success.

In Conclusion

Delaware has designed and is putting in place an effective program for a global approach to economic development. Key program elements are *financial services* (international banks, shared foreign sales corporations, and foreign insurance companies); *trade promotion* (exporter assistance, an Export Trading Company, and traffic through the Port of Wilmington); *trade related services* (export finance, trade missions, world trade conferences, and overseas representation); and *physical facilities* (Foreign Trade Zones, invest in Delaware, and a World Trade Center). Together, these elements should enable Delaware firms to compete successfully in world markets. ■



Senator Andrew G. Knox has served continuously in the Delaware General Assembly since his first election to that office in 1974. He serves today as Chairman of the Governor's International Trade Council and as a member of the Foreign Trade and Environmental Committees at the National Conference of State Legislators. His other major legislative interest has been the environment. He has sponsored or co-sponsored all major Delaware environmental legislation, for which the Delaware State Bar Association in 1985 conferred on him the Distinguished Legislative Service Award. After a distinguished career in private industry, Senator Knox retired in 1977 in order to devote full time to government and community affairs.

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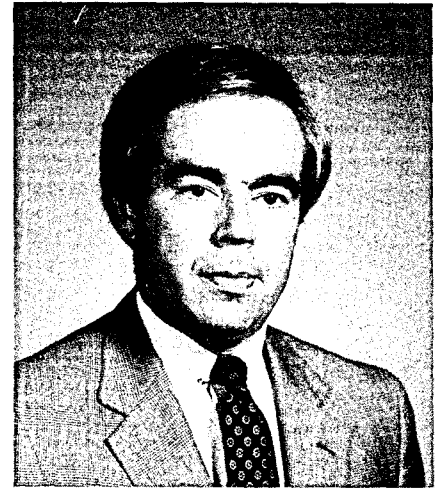
David S. Swayze

Eager to sustain the astounding success of the Financial Center Development Act of 1981 ("FCDA"), Delaware cast an opportunistic eye in 1983 on the growing international banking activities of domestic banks, conducted principally through International Banking Facilities (IBF's) and Edge Act Corporations; and conversely, upon the burgeoning United States banking activities of major foreign banks, fostered by Congressional passage of the International Banking Act of 1978. With respect to both categories of international banking, Delaware had to contend with the reality that Edge Act Corporations of domestic and foreign banks and foreign bank agencies and branches in the United States had established enclaves exclusively in major commercial centers outside of Delaware where their customers (and each other) are principally found. But there was evidence that the twin magnets of tax incentives and productivity might attract a sufficient number of domestic and foreign international banking operations to make Delaware a second-tier market place. As we shall see, that evidentiary trail has now grown somewhat cold.

The first initiative, the International Banking Development Act ("IBDA"), 64 Del. L. Ch. 43 (1983) was designed to encourage FCDA banks to move mobile portions of their international banking activity out of New York and into Delaware. Chemical Bank Delaware and Manufacturers Hanover Bank Delaware were at the forefront of this initiative, and Chase Manhattan Bank Delaware participated as well.

The idea behind IBDA is simple: it provides a deduction from state taxable

income for the net income of all transactions classed as "international banking transactions" derived by a banking organization doing business in Delaware. At the time of the passage of the act, a number of states, including New York, California, Florida, and Georgia, had granted similar tax relief to those international banking transactions eligible for booking in an International Banking Facility. The Delaware exemption, however, took a giant step beyond the limited definition of IBF-eligible transactions by extending tax exempt treatment to four categories of international banking transactions in addition to the receipt of deposits or borrowings or extensions of credit by an IBF, including: (1) the financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services; (2) the financing of the production, preparation, storage, or transportation of tangible personal property or services identifiable as directly and solely for export from, or import into, the United States or between foreign jurisdictions; (3) the financing of contracts, projects, or activities to be performed substantially abroad and (4) income derived from entering into foreign exchange treating or hedging transactions in connection with any of the other exempt categories of transactions. Examples of transactions within these non-IBF categories that would not be exempt from taxation in Delaware's sister jurisdictions would include banker's acceptances; international banking transactions where the obligor is a U.S. resident; various hedging and foreign exchange treating transactions; and letters of credit.



David Swayze's previous contribution to this magazine was a study of sentence reform. He is a member of Duane, Morris & Heckscher, with whom he conducts an active commercial practice. Let us hope that the shift of his interest from crime to commerce is representative of our changing national priorities.

Additionally, there are no transfer, document, personal property or similar levies on those transactions, which are exempted from the bank franchise tax under 5 Del.C. §1001(3).

Undaunted by the glacial growth of international banking activity in Delaware by the FCDA banks, the State next scrutinized domestic activities of foreign banks doing business in the United States. The rationale for doing so was clear: a number of larger foreign banks, eager to take advantage of both the favorable economic climate in the United States and the competitive equality granted them by the International Bank Act of 1978, had moved their domestic commercial and retail operations in the United States well beyond these states (principally New York and California) in which their United States branches or domestic bank subsidiaries were chartered. Delaware had proven its mettle as a sophisticated regional financial center. Why shouldn't foreign banks be as susceptible to the lure of Delaware as their FCDA competitors engaging in essentially the same businesses?

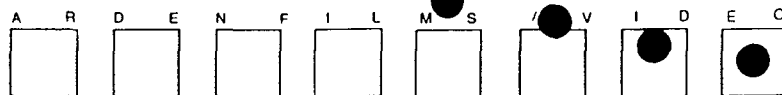
The state responded to this unassailable logic by adopting the Foreign Banking Development Act ("FBDA") in 1986 (65 Del.L.Ch.444). This act permits a foreign bank, whether or not it has a

current domestic presence in the United States, to charter an entity known as a "foreign bank agency". Such an agency may exercise, subject to the traditional FCDA prohibitions against more than one office and solicitation of Delaware business, all the traditional powers of a bank chartered in Delaware, with two federally imposed exceptions: a foreign bank agency may neither exercise fiduciary powers, nor accept deposits that are not properly classified as "credit balances". (In recognition of the substantial traveler's check business done by certain foreign banks, which Delaware targeted, the definition of "credit balance" expressly *includes* balances maintained in connection with the purchase of such instruments.)

The principal benefits available to a foreign bank under the FBDA are predictable: the ability to enjoy the productivity and cost savings of a Delaware situs, and the ability to take advantage of the regressive bank franchise tax rate introduced by the FCDA (as well as the aforementioned total exemption on income from international banking transactions introduced by the IBDA).

Once again, the indisputable potency of these benefits for foreign banks remains untapped. To date, only Barclays Bank PLC of England has filed an application to form a Delaware-chartered foreign bank agency, although a number of other large foreign banks with a United States presence are engaged in serious inquiry.

It may be said that Delaware's ambitious legislative foray into the international banking arena underestimated how deeply rooted foreign banks are in those markets where their principal branches are found. This is in part attributable to the justifiably conservative approach that most foreign banks take in an unfamiliar market such as the United States, and in part to the relatively small size of both domestic and foreign international banking operations in the United States. Nonetheless, the regulatory framework and tax inducements offered by the IBDA and the FBDA are unparalleled, and many of the perceived business reasons for the creation of an international banking community in Delaware remain sound today. Consequently, those responsible for growing that community doggedly persevere. ■



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Delaware Gains From Trade

Eleanor D. Craig

Delaware produces more than \$1 billion dollars worth of products for export each year. Those exports provide nearly 14 percent of the State's manufacturing employment. Delaware ranks among the top 10 states in the rate of export growth. Exports are particularly important to the chemical, electronics, and machinery-producing industries in our State.

Manufacturing employment in Delaware has remained relatively stable since it peaked in December 1979, when it provided jobs for 71,000 workers. Employment in manufacturing fell 8 percent to a low point in November 1982. Since then it has increased 7 percent, providing jobs for 69,400 workers in September 1987. In contrast, manufacturing in the U.S. had a far more serious decline, with a loss of 15 percent of the manufacturing jobs between the peak in 1979 to the trough in 1982. Since then U.S. manufacturing employment has also experienced significant gains, now currently registering employment levels 6 percent higher than the low point of the last recession.

Both the Senate and the House of Representatives have passed legislation now being studied by the Conference Committee. If the differences are ironed out and the bill is signed by the President, he will be required to impose trade sanctions on countries running sizeable trade surpluses with the U.S. if those countries engage in "unfair trade practices". This legislation would drastically reduce the volume of foreign trade for the U.S. and for Delaware, and significantly harm the economy of Delaware.

Strength of the Economy

Today the United States is in a strong position as the world's largest interna-

tional trader: last year we traded more than 10,000 different commodities. One-seventh of our manufacturing output is exported, and the value of those exports rose 5 percent in 1986. Our manufacturer's share of U.S. output is now higher than the post World War II average. Last year productivity increases by American manufacturing workers exceeded those of the entire industrialized world, helping to make unit labor costs grow more slowly here than in all other major trading nations. In addition, our economy employs a greater percent of the American population than ever before in history. Output per capita is at an all time high.

These successes are a result of specific government policies, which have lessened tax burdens, deregulated American industry, and provided job opportunities for more and more Americans. It would be a horrible mistake now to endanger these successes by enacting legislation to "level the playing field" or to punish our allies who have trade surpluses with us.

The trade deficits we have experienced since 1982 are the result of the strength (rather than the weakness) of the American economy. American taxes are lower and regulations fewer than those of our trading partners; U.S. inflation rates fell and have remained low; the rate of return on American capital has continued to exceed those of most other developed countries. Investment dollars wouldn't continue to flow into the U.S., if investors didn't believe that our economy will continue to be strong. Historically trade deficits have coexisted with strong economies, such as prevailed during the Industrial Revolution and the great railway boom.

America has generated 13.6 million new jobs since 1980, 58,000 of them in

Delaware. These net new jobs account for nearly one-fifth of total employment in the State. A thriving economy generates both winners and losers. Trying to shield all firms and businesses from the competition of foreign production encourages stagnation, flabbiness, and trade wars. It is the most inefficient businesses and the least competitive ones that cry the loudest for plant closing rules and government takeovers of financial obligations (e.g. pension commitments in the steel industry). They generate European-style intervention, they lead to economic stagnation, and they have failed in the past. The rest of the world, including the Soviet Union, is moving towards freer, market-driven economic policy. Why then, as Clayton Yeutter states, is the U.S. "closing the barn door when the horse wants to get back in"? Why, when we have had tremendous successes with our free-market policy, does Congress try to move the country in the opposite direction with a restrictive trade policy?

Many in Congress find it politically expedient to whine about how unfair the world is, instead of seizing opportunities available in expanding world markets.

Causes of Trade Deficits

The trade legislation passed places the blame for trade deficits on the wrong parties, including those countries enjoying trade surpluses with the U.S. Many in Congress find it politically expedient to whine about how unfair the world is, instead of seizing opportunities available in expanding world markets. Senators and representatives fight for "level playing fields" and aim to dismantle "unfair trade practices". Economists have found that if all other countries took down their trade barriers against the U.S. our trade deficit would only be reduced by approximately 6 percent or \$10 billion of last year's \$150 billion. Although another \$10 billion in exports would certainly be helpful to some firms, generating "fair" trade should not be the focus of our trade policy. Even if we were to eliminate all unfair practices abroad, other exporting countries would have an equal shot at those markets. The improvement in our

(Continued on next page)

Delaware Gains From Trade (continued)

trade balance might be far less than the estimated 6 percent. What would our response have been if the rest of the world had punished us for our huge trade surpluses from the 1890s through the early 1980s?

Furthermore, the U.S. does not provide "fair" access to many markets. We have very high tariffs on chemicals (approximately 20 percent) and tariffs as high as 49 percent on textiles. We have quotas on imports of cheese, sugar, and cotton, and "voluntary" restraints on imports of Japanese autos and machine tools from Taiwan and Japan. We "dump" wheat in Russia. Who is to blame here?

Historically, attempts at forcing "fair" trade haven't provided us with very promising results. An example of a poor "fair" trade agreement is the pact made with Japan regarding semi-conductors. We imposed sanctions against Japanese products to "level the playing field" of trade, only to find that we had cut out a valuable source of chips to our own manufacturers of electronic equipment.

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Japan raised the price of the electronic components, the U.S. users of chips had higher production costs, and Japanese markets were not opened. A 1987 study of the voluntary restraints on steel exports to the U.S. showed savings of 14,000 American steel producing jobs, but a loss of 50,000 jobs in those industries that use steel.

To date the U.S. definition of "unfair" trading practices seems to be the success of foreign producer in selling goods in the U.S. at prices lower than those for which we can sell them ourselves.

A study of the voluntary restraints on steel exports to the U.S. showed savings of 14,000 American steel producing jobs, but a loss of 50,000 jobs in those industries that use steel.

Can We Compete?

Domestic competitiveness is the only answer to U.S. economic strength, and would be harmed by imposing constraints on our trading partners. Governmental policy can't possibly increase the competitiveness of all products made here. Its goal has to be to increase the productivity of the economy as a whole. In the process markets will discover that we have a comparative advantage in the production of certain goods, while other countries can produce some more cheaply. It is this spontaneous process whereby each country produces those goods which it can make most efficiently that generates greater output for the world as a whole. It should be our trade policy 1) to open markets in countries receptive to our products, such as Canada, 2) to increase American productivity by enhanced educational opportunities for American people and revisions in our anti-trust legislation, and 3) to keep the burden of government as low as possible in order to encourage investment in American firms by both our own citizens and those from the rest of the world.

Increased trade has been called the "cement of freedom". It bonds countries in mutually beneficial relationships that improve overall economic fortunes and assure vested interests in the continuity of peaceful interactions between trading countries. As the world increasingly embraces market systems, each

country's economic strength will be a function of its ability to compete in world trade. The U.S. will be less and less able to afford production inefficiencies generated by "protecting" our existing trade patterns.

Displaced Workers

Admittedly, there are some Delaware workers who may lose their jobs when our producers face increased foreign competition, and government should help them. One of the best sources of assistance is a low unemployment rate that makes alternative job opportunities available. The current unemployment rate in Delaware is 2.9 percent, the second lowest in the nation.

A dislocated worker is usually defined as one whose job has been lost to structural changes in the labor market, e.g. automobile assembly plants that replace human workers with robots or production shifts to textile mills in the Pacific Basin where labor costs are one-half of those in the U.S. Traditionally displaced workers were thought to suffer from long-term unemployment. Recent empirical evidence suggests that workers affected by economic change do not experience prolonged difficulties. The Brookings Institution defines a displaced worker as one with a minimum of four years job experience in employment covered by an unemployment compensation program, and as one whose former employer will certify that his job will not reopen for at least six months. Others define dislocated workers as those who need to make a major change of job and income.

Most researchers estimate the number of dislocated workers at .03 to .05 percent of the labor force, a range of 975 to 1625 people in Delaware in September 1987. An alternative definition frequently used is 10 percent of the unemployed—940 people in Delaware in September. I estimate that there are currently 1300 dislocated workers in Delaware.

Assistance for Dislocated Workers

There are three types of programs designed to help the dislocated worker: those that resist changes in the economy, those that protect the worker from

change, and those that help the workers adjust to change. Programs resisting change include protectionism, plant closing rules, and bail outs for large firms. These cannot provide any long-term help and merely impede the structural changes going on in the world, making U.S. businesses less able to compete successfully. Programs protecting workers from the costs of change include income transfers, such as unemployment compensation and Trade Adjustment Assistance, which provide temporary relief. The most successful programs are those that ease the adjustment to the economic changes. These are placement and retraining programs.

Existing State Programs

The primary program assisting dislocated workers in Delaware is Title III of the Job Training Partnership Act of 1982 (JTPA). When a worker applies for unemployment benefits he registers with the State Division of Employment and Training Services (in the Department of Labor). He is then eligible for workshops, class room training, job search assistance, and some support services. In 1986 there were 784 participants placed in unsubsidized employment at an average wage of \$6.14 per hour. The program is run by the Division of Employment and Training Services, overseen by the Private Industry Council, and funded 60 percent by federal money with 40 percent State matching money. In 1986 the program cost \$521,000.

The Federal Trade Adjustment Assistance Program funds training for unemployed workers whose former employers apply direct to the federal government and demonstrate that they have lost production to foreign competition. This year there are three participants in the program for a cost to the federal government of \$15,000.

The State Blue Collar Worker Law earmarks the revenue from a tax of 0.1 percent of all employers' wage bills under the Unemployment Compensation Program for a special fund providing training and placement services for displaced workers. The Private Industry Council also has oversight responsibility for these funds. The revenue from this source was \$1.6 million in 1987, and to date the JTPA program has handled all identified dislocated workers.

The unemployment compensation program pays a maximum of \$205 per week to all qualifying unemployed workers for up to six months. State benefits average \$128 per week. The Unemployment Insurance Fund is solvent, with current balances at \$130 million.

Alternative Programs

The JTPA program is working extremely well. The only problem has been to identify all unemployed workers not likely to find jobs within a short period of time. One-fifth of U.S. workers are unemployed for some part of every year through the process of voluntary job changes, entrance into the labor force, or structural unemployment. The Department of Labor and the Private Industry Council seem to be working to screen unemployment compensation recipients more carefully, and this identification problem may not exist next year.

I recommend consideration of two other programs, the first a genuine voucher program for job training and/or general education; the second a wage subsidy program. The American Society for Training and Development estimates that training costs are approximately \$3000 per worker, or \$250 a month. A structurally unemployed worker could choose to (a) take his \$650 per month, with the remaining \$125 and a State-provided equal match of \$125 buying education or training vouchers. (Sixty percent of displaced workers lived in households with another employed member.) If all 1300 possible displaced workers in Delaware opted for the training/education voucher the cost to the State would be approximately \$1 million for six months. This program encourages the worker to choose his best training option since he is paying part of the cost in reduced unemployment compensation benefits.

My other suggestion is a wage subsidy. Each structurally unemployed worker could be given a check payable to his new employer for half his salary for six months. The prospective employer gets a half-price employee whom he can now afford to retrain on the job. The individual and the private sector will decide what type of training and job skills will maximize their well-being. If all the displaced workers in Delaware signed up for such a wage subsidy, the



Associate Professor of Economics at the University of Delaware, Eleanor Craig completed undergraduate work at Swarthmore College and earned a Masters degree in Economics at Pennsylvania State University. She has been a member of the faculties of both Penn State and Rutgers Universities. Ms. Craig was the Chairwoman of the Delaware Economic and Financial Advisory Committee for eight years during the du Pont administration. She serves on the boards of directors of Bank of Delaware, Swarthmore College, and the National Tax Association. (Photo courtesy of Bank of Delaware.)

costs would be \$4.6 million, but the savings in unemployment compensation would be \$5.3 million (assuming all 1300 received average benefits for the full six months of eligibility).

The displaced workers for whom it is most difficult to find a satisfactory solution are well paid workers with highly specialized training but limited formal schooling. These workers do not have transferable skills and fare worst in rapidly changing labor markets. Reemployment earnings of this subgroup were found to drop by 25 percent. The difference fell to less than 5 percent after four years of employment in new jobs. Any training voucher or wage subsidy program cannot be expected to place displaced auto workers, for example, in alternative \$23 per hour jobs.

On balance, Delaware's strong manufacturing sector is very dependent on the world market. Workers whose jobs are lost to world competition should be retrained and helped to find alternative positions, but the price of protectionism could be a severe recession. And that would cost more jobs than protective bills ever thought of saving. ■

A Perspective On Trade Legislation

The Honorable William V. Roth, Jr.

The well-known philosopher historian, Will Durant, once wrote: "The crossroads of trade are the meeting place of ideas, the attrition ground of rival customs and beliefs; diversities beget conflict, comparison, thought; superstitions cancel one another, and reason begins."

Today, as we move into the 21st century, we see the full meaning of Durant's words. The world has become what we commonly refer to as a global community, exchanging products, philosophies, ideas, and customs.

I believe we can call this economic evolution (even revolution) progress. It has established allies and liaisons of lasting duration and security in the realm of geopolitics. It has provided a climate of intellectual growth and corporate expansion.

However, as with any progress, it is accompanied by challenges. America has been forced from its comfort zone, where it once reigned as the king of commerce and science and technology. America has awakened to find stiff competition from abroad, from countries that once manufactured and exported only cheap plastic dime toys that hung in cellophane wrap by the cash registers in our variety stores. Today, these countries, Japan, South Korea, Taiwan, and the other rim of Asia nations, are producing quality articles that American consumers are buying.

This one fact is a most basic cause of our large and dangerous trade imbalance. The American consumer buys the best product at the best price. If that product is American, he will buy American. If it is foreign, then most likely he will buy foreign.

Can the U.S. sustain a trade deficit that has reached unprecedented heights in recent years? No, one way or another the trade deficit will be reduced sub-

stantially. The central question today on trade is not whether the multi billion deficit will be reduced, but how? Will it be done in a responsible way that will build on the overall economic success America has enjoyed in the eighties—including a record Gross National Product, low interest rates, low inflation, and high employment? Will it be done in a way that will bring even more jobs, stronger growth, and a higher standard of living to Americans? Or will it be done drastically, for example by trade protectionism, that will surely doom our economic future?

While trade legislation is not a panacea for the trade deficit, the legislation now before the Congress can help us build on the economic growth of the 1980s through a stronger U.S. trade performance. I believe the members of the House-Senate conference committee on the trade bill (and I am one of them) should work their way carefully through this gargantuan legislation (The House and Senate bills are each about 1000 pages) retaining only constructive provisions. A responsible trade bill that can be signed into law will help promote confidence in American economic leadership both here and abroad.

I have pressed five key legislative issues on trade and I am very pleased that my initiatives in each of them have been incorporated into the Senate trade bill now before the conference committee.

My proposals would:

1. Increase the prospects for successful multilateral negotiations to open foreign markets and ensure fair trade competition for the future;
2. Encourage action against unfair trade, particularly when imports infringe U.S. intellectual property rights;
3. Help workers who lose their jobs to imports rejoin the work force;

4. Strengthen the law that permits the President to restrict those imports threatening an industry critical to the national security;

5. Change our laws to encourage action by management and labor to make any industry that receives import relief more competitive.

The President must have the authority to proceed seriously with international trade negotiations. The Senate legislation we are now considering is a significant improvement over the bill as originally introduced. The original Senate Omnibus Trade bill required not only the passage of a trade bill this year, but also the separate passage of a resolution endorsing a statement by the President on trade policy before multilateral trade negotiations could get fully underway. These procedures would have greatly delayed, if not foreclosed, the prospects for successful trade negotiations.

I am very pleased that the trade conferees have already agreed to substitute alternative procedures I proposed on negotiating authority. Under these procedures, Congress will provide so-called "fast-track" negotiating authority to the President now. But, in 1991, if the President wants to continue to negotiate, he must demonstrate tangible progress in the negotiations. These procedures will maximize pressure on our trading partners to open their markets and eliminate unfair trade practices in the new negotiations.

This is a results-oriented approach. Negotiating authority is linked to *action*, not promises in trade policy statements. These changes would immediately facilitate the Uruguay Round of trade negotiations, making it more likely for the U.S. government to reap an early harvest of agreements on international rules for fair trade in areas such as agriculture and services, which are so important to

Delaware. Our chemical companies, which are among this nation's leading exporters, would also gain significant benefits from new market-opening trade agreements.

While negotiations and other cooperative initiatives should have a significant place in U.S. trade policy, there are times when the U.S. must act unilaterally to stop blatantly unfair trade. To me, one of the most egregious examples of unfair trade occurs when foreign countries pirate U.S. technological innovations and then ship the pirated goods into this country infringing U.S. patents, trademarks, and copyrights. The Senate trade bill includes legislation I developed with Senator Lautenberg of New Jersey to make it much easier to stop imports of products that infringe U.S. intellectual property rights. Our innovative ability has been the key to America's success as a nation and is the key to our future prosperity as well. This is our real comparative advantage over other countries, and we must not allow it to be literally stolen. The passage of this provision is especially important to the future of chemical and pharmaceutical industries.

I should also like to discuss my efforts on Trade Adjustment Assistance, a government program established to help workers who lose their jobs because of imports. During the Carter Administration and again in 1986, I successfully led the effort to extend the Trade Adjustment Assistance program to assure continued help to workers hurt by imports. The trade bill now before us includes additional proposals I have made for reform of the Trade Adjustment Assistance program. These reforms have passed Congress several times before, but are not yet law.

In addition to income support benefits, my reforms would place more emphasis on retraining workers to get them back to work. My proposal would provide sustained funding for the program through a very small import fee (estimated at 1/10 of a percent). The U.S. would negotiate with its trading partners at the General Agreement on Tariffs and Trade, the organization that regulates world trade practices, to secure the import fee. I strongly believe that those people who benefit from trade should help those hurt by it.

The state of Delaware has one of the lowest unemployment rates in the country. For May 1987 the rate was 3.3 percent. However, over the past decade, more than 11,000 workers in Delaware

have benefited from Trade Adjustment Assistance, including workers from the steel, auto, chemicals, textile, and apparel industries. The reforms I have introduced will guarantee that this program continues and that assistance, both in the form of retraining and income support, is provided to workers who lose their jobs to import competition.

Together these changes to our trade laws will promote the competitiveness of U.S. industry, encourage decisive action against unfair trade, and at the same time, help secure the benefits that trade brings to most Americans.

It is important, however, to be clear and realistic about what trade legislation can and cannot do. While it can be tailored to be a serious constructive effort to make trade fairer and while it can also position U.S. industry and agriculture for a stronger trade performance, it alone is not the answer for those who seek a responsible reduction of our trade deficit.

Reduction of the trade deficit will also require other action:

First, the Congress will need to face up to the budget deficit. Some cite U.S.

policy as the culprit for the trade deficit and for what comes along with such an enormous trade deficit, the burden of being an international debtor nation. However, we *are* a debtor nation and we have a trade deficit not because of trade policy, but because of big spending by Congress.

This country became an international debtor by spending beyond its means, and financing excess spending by borrowing abroad. Capital inflows escalated the value of the dollar and the high dollar precipitated the explosion of the trade deficit. The Congress must act decisively on the budget deficit, not just trade legislation.

Spending restraint without tax increases is not only the most effective approach to deficit reduction, it is also good economic policy as it will make more capital and labor available to the private sector for economic growth.

But, responsibility to alleviate the current trade situation is not only a matter for the U.S. Congress. It depends on action by our trading partners and by our private sector as well.

(Continued on next page)

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Spending restraint without tax increases is not only the most effective approach to deficit reduction, it is also good economic policy as it will make more capital and labor available to the private sector for economic growth.

Other nations are quick to denounce the rising sentiment for trade protectionism in the United States, but they are slow to accept their great responsibility for the growth of this protectionist fervor.

I have been deeply disappointed over the last year, as our trade difficulties have escalated, that we continue to encounter blatant unfair trade practices by Japan and simply outrageous proposals by the European Community for significant new import restrictions on U.S. agriculture exports.

Trade must be a two-way street. Trade should be mutually beneficial. It is not enough for countries just to formally open their markets to U.S. goods. There has to be a willingness to buy U.S. products.

Our trade relations with Japan, as a key example, have reached a boiling point not because of formal barriers to U.S. access to Japan's market. While there is on paper a two-way trade street between the United States and Japan, in reality it does not exist. If we are to avert a major confrontation with Japan on trade, Japan must reverse its buy-national mentality and mount a major effort to turn the psychological and economic structural momentum of four decades around to make manufactured imports "legitimate".

A mutually beneficial resolution of the inequities in the trading relations between the United States and Japan is crucial not only for the economic and political future of our two countries, but for the international trading system as a whole.

Finally, there is only so much that government — all governments — can do. Here, I return to the most basic issue I raised earlier. For America's future, the private sector — in management, in labor, and in academia — must make this country a smarter, better trader.

In conclusion: I think it is important that Congress move ahead with responsible trade legislation. At stake in the current trade debate is not just this nation's trade balance, but the position of the U.S. in the world economy for years to come, growth in the U.S. and most other nations, and the cohesion of alliances vital to U.S. security.

I have been working in the trade conference to ensure that the Congress sends a bill to the President that is pro-trade and pro-growth. Trade has enormous potential to raise our standard of living and create jobs for the future. My hope is that Congress will pass a trade bill and take other actions necessary to realize this potential and establish a winning strategy on trade for the United States. ■



It is hardly necessary to introduce Senator Roth to our readers. Nonetheless we should like to tell a little story about him, because it pleases us. In December the Wall Street Journal printed an article by the Senator. It prompted a letter from a Mr. L. W. Edwards, Jr. of Wilmington, North Carolina. His article, declared Mr. Edwards, "was a masterpiece of common sense. How out of place he must feel as a member of the U. S. Senate." Mr. Edwards's letter appeared in the Journal on December 31, 1987, furnishing us all with the makings of a new year's resolution: in matters of budget deficit, trade deficit, and international trade. Let us emulate the common sense of this distinguished legislator.

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And They're Off! Foreign Law Firms Race to Tokyo?

Carla Sydney Stone

Will foreign lawyers in Japan blaze new paths to profitability? Or are they destined to repeat the dismal trail of their less solvent (but now wiser) friends, the foreign bankers? Either way, the toll is about \$2 million.

Foreign lawyers, including about 70 Americans, began practicing in Japan during the U.S. Occupation. Although much of their business was related to the Occupation, they were engaged in a wide variety of activities, and some even represented Japanese clients in the courts. By 1955, the open policy toward foreign lawyers changed. Legislation was passed prohibiting nonJapanese from practicing law in Japan. Except for those

who were grandfathered in, most of whom are now dead, the only way a foreign lawyer could work in Japan was as a "trainee", under the supervision of a Japanese lawyer. The practice of law effectively was closed to outsiders for over 30 years.

All of this changed in May, 1986 with the passage of the "Special Measures Law for the Handling of Business by Foreign Lawyers". This law was the response to foreign pressure to allow lawyers to service their clients in Japan. A U.S. trade official, who declined to be identified, summed up the huge potential represented by the emergence of Tokyo as one of the world's leading money centers, the increase in Japanese

direct investment in the U.S., and the certainty of more Japanese takeovers of American companies. "Wherever the banks go, their lawyers follow."

Two years of intense negotiations between the Ministry of Justice and the Office of the U.S. Trade Representative were required to eliminate proposals for prohibitively strict financial requirements which would have resulted in the virtual ban of foreign lawyers from Japan. The most onerous provisions were dropped, and by April 1, 1987, when regulations under the law went into effect, over 20 foreign firms had announced their intentions to open branches in Japan.

(Continued on next page)

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Race to Tokyo (Continued)

This is not to say that it is easy to become a lawyer in Japan. In an interview with *DELAWARE LAWYER*, the Ministry of Justice Attache of the Japanese Embassy in Washington, Mr. Kitada, stated that requirements may still prohibit many firms from opening branches in Japan. First of all, it is not foreign law firms that receive approval to practice in Japan, but individual lawyers, and the regulations specifically address this important distinction. Lawyers who wish to practice in Japan must pass through a two-stage process, first receiving approval from the Ministry of Justice, and then registering with the *Nihon Bengoshi Rengokai*, the Japanese Bar Association.

**"Delaware does not have
reciprocity with Japan..."**

Mr. Kitada said that some of the restrictions such as evidence of financial backing, permanent residency in Japan, five years of experience in the home country, and no criminal record are fairly straightforward and easy to meet. "However, no Delaware licensed lawyers are permitted to practice in Japan. Delaware does not have reciprocity with Japan and until Delaware changes its law, the Ministry of Justice cannot give approvals to them to practice in Japan." He noted that only lawyers licensed in California, the District of Columbia, Hawaii, Michigan, and New York are eligible under the terms of the reciprocity provision.

However, registration with the *Nihon Bengoshi Rengokai* does not imply that the foreign lawyer is actually a Japanese lawyer. All non-Japanese lawyers are *Gaikokubo jimu bengoshi*—foreign legal consultants. Their scope of practice is limited to giving advice on non-Japanese law. Although they may have Japanese clients, they may not represent them in the Japanese courts, nor may they counsel them on Japanese law. Mr. Kitada said that in this respect, the foreign lawyers are being treated the same as any Japanese person who has not passed the Japanese Bar exam. When asked if foreign lawyers could take the exam, he said that they "shouldn't bother, even if the foreign lawyers are fluent in Japanese. Less than 1.5 percent of the Japanese candidates who take the Bar exam ever pass it."

**Less than 1.5 percent of
Japanese candidates ever
pass the bar exam.**

As of last December, the Ministry of Justice had granted 28 approvals to foreigners to practice in Japan. All of them have registered with the Japanese Bar Association. As expected, most of the foreign lawyers are Americans and British. Surprisingly enough, fluency in Japanese is not a prerequisite to receiving approval to become a foreign law consultant. However, lack of language capability may restrict the foreign lawyers' ability to get things done, particularly since the firms are not permitted to have joint partnerships with Japanese law firms. This last restriction is especially important, since the cost of opening a Japanese branch is estimated to reach \$2 million.

So far, ten American and two British law firms have representation in Japan. U.S. officials expect many other law firms to take a wait-and-see position given the high cost of doing business in Japan. The cost of commercial real estate in Tokyo is about six times the cost in Manhattan. Reasonably priced, American-style residential housing is nonexistent. One bedroom, furnished apartments in central Tokyo *gaijin** communities cost over \$60,000 a year. Interviews with Skadden Arps attorney Carl Cummings in Tokyo confirmed the frustrating task that American companies face in finding and equipping offices and providing housing for their employees.

Aside from the obvious cost of space, language, cultural and technical differences increase the price of opening a branch. Japanese residential landlords are reluctant to rent to foreigners, citing the safety hazard that non-Japanese speaking tenants pose in case of an emergency. Mr. Cummings found a reticence to rent to him "because of [his] profession." In the U.S., one is not barred from renting an apartment on account of being a lawyer. The Japanese attitude toward lawyers is wary. (To have to use them means that there has been a failure to achieve trust and understanding among the parties.) This adds another burden to finding adequate housing.

When Skadden Arps tried to install the same kind of Japanese-made printers the firm uses in the U.S., they found them unavailable in Japan. Even if they re-

**slang term for foreigner*



The Hongkong and Shanghai Banking Corporation, parent of Marine Midland, towers over the Bank of China (left). For how long?

imported them, the manufacturer would be unable to service them.

American companies often complain of the invisible channels the Japanese use to get things done. Everything from bilingual secretaries to housing to office space has to be found by word of mouth. Time has a different meaning in Japan.

Is there enough business to justify the massive differential in office and staffing costs? Since foreign law firms will be barred from practicing local Japanese

law, their primary role will be as the interface between the needs of their American clients in Japan and *visa versa*. The increased merger and acquisition activities of the Japanese and their entry into the American financial scene portends a greater role for American law firms in Japan. Whether they will be able to compete with their Japanese counterparts in providing these services remains to be seen. So far, at least, 28 lawyers think the future is bright. ■

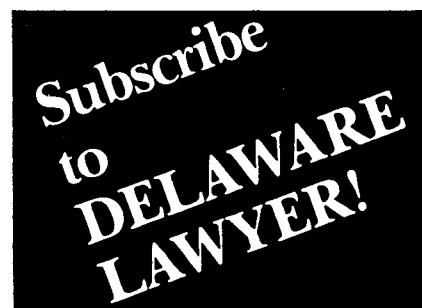


It appears that the Japanese have a yen for U.S. gourmet-to-go: a selection of the Colonel's best.



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Legal Culture Shock

(Franco-American Division)

Jean Taquet

The recent tussle between the Wall Street Journal and those advocating greater exchange of information between American and Soviet lawyers reminds us of a truth we may neglect at our peril in an international business community: legal systems derived from cultures different from our own may impinge in surprising ways on what we mistakenly take to be run of the mill transactions.

The differences between the French legal system and our own, though profound, appear trifling when contrasted with the gaps that yawn between the jurisprudence of the West and that of the exotics on the Pacific rim, who figure ever more prominently as our trading partners. Mr. Taquet's article may stimulate much needed sophistication in matters of comparative law.

The author, a French lawyer now resident in Delaware, describes below the mild culture shock that awaited him on this side of the Atlantic. Mr. Taquet is associated with Conner, Marvel & Pierce of Centerville.

When a member of the Board of Editors suggested that I write about the thoughts of a French lawyer concerning the American judicial system, I quickly realized that the subject was too broad to be treated in a single article. I also realized that, since the lawyers I had met had little or no knowledge of the French judicial system, I would have to explain the fundamentals of that system in order to compare it with the American. This requires analysis of major differences between the two systems: their distinct origins, the manner in which they are applied by judges in each country, differing modes of proof, and the stages of litigation.

The roots of the French system go back to the Roman Empire. After the fall of the Empire in the second century, a structured society no longer existed. Legal decisions derived from the old Roman code and, increasingly, the customs of the barbarian tribes. During the early ninth century Charlemagne created an empire covering most of Europe. At that time the Catholic code of ethics became the third source for legal decisions. At Charlemagne's death his empire was divided among his three sons. These three countries did not survive very long. France emerged as a

nation under Saint Louis (Louis IX) in 1266 and a process of centralization began. By 1475 Louis XI was able to assert his authority over the princes and dukes who were his vassals. This allowed him to create a central administration, including a postal system, a police force, and an army.

In the early sixteenth century, France attained its present day geographical area and became very powerful. The king ruled through ministers selected for merit rather than noble birth. In addition, the slow process of unifying the language and the law began.

The kingdom of France entered its most glorious period a century later under the rule of Louis XIV. For the first time a member of the bourgeoisie, Colbert, occupied a ministerial post. He codified the shipping industry, regulated business done by small and large concerns, and standardized the training of apprentices in the artisans' professions. The only thing that did not change was a society still divided into four groups, the aristocrats, the army, the church, and the masses. The last still had no political representation whatsoever and they alone bore the burden of heavy taxes.

The structure of society changed with the French Revolution, which began on

July 14, 1789, and ended on December 2, 1801, with the coronation of Napoleon. During this time, the Declaration of Human Rights and three constitutions were written. Local and national administrations were created and divided into 90 departments with a governor (a Prefet), an assembly, and a court of appeal. La Cour de Cassation (the French Supreme Court) was also created to give definitive interpretations of the law.

After having proclaimed himself emperor, Napoleon codified all aspects of French law under a civil code (Napoleonic code), and business, criminal, civil procedure, and criminal procedure codes. After Napoleon's fall from power, France went through many changes in form of government. First, from 1815 to 1848 it was a kingdom, which gave way to the brief Second Republic, in turn replaced by the Second Empire. There followed a succession of Republics, the Third from 1871 to 1940, the Fourth from 1945 to 1958, and most recently the Fifth Republic, in existence since 1958. During this nearly two centuries of successive governmental alterations, the legal system has remained the same.

The duty of the French judge is to protect the law at all levels of justice, while the Cours de Cassation (Supreme Court) regulates the uniform interpretation of the law. This creates the first major difference between the two legal systems. The American judge may either apply the existing statutory law or the precedent from case law. As a last resort he sets a precedent. The French judge never has such freedom; his role is to define the case in such a way that the law and its interpretation by the Cours de Cassation can be applied. If the law has not yet been interpreted, the case most often will be appealed under the auspices of a union, a consumer organization, a government body or agency, or various associations until it reaches the Cour de Cassation for interpretation. In some very controversial cases, the district attorney or his representative will appeal with a procedure called "in the interest of law". The American judge can revise the way the parties have framed the issue and request more briefing and argument. French judges are bound by the legal questions raised by the parties. Because of these differences, the role of the judge and the expectations of the public are different in the

two countries. In the United States, the judge is a publicly elected or appointed official, and represents the ideal of the wise, just man. He is generally a former lawyer. In France, the judge is a legal technician and has a distinctive and more extensive education than the French lawyer receives. Following high school, a prospective judge studies law for four years at a university, after which he must attend the magisterial school in Bordeaux for three years. His career depends on the grades he receives from his superiors and peers. In France, judges and prosecutors are part of the same branch. Therefore, once a judge has graduated, he can serve terms of varying length as either a judge or a prosecutor. The day to day work is very similar in both countries; the main concern is to find the legal justification for a decision.

Among the most important factors in reaching a legal decision are proof and evidence. Here again, different national histories have given birth to different concerns. The United States was created by the agreement of thirteen former colonies, which were independent at that time. This process was possible because the former colonies transferred some of their rights to the general government so that it could function.

Shortly thereafter guarantees were given to the citizens to protect them from the federal government. The situation in France is different. The concern of the kings between the Middle Ages and the French Revolution was to create a unified country from a group of very different provinces. The destruction of the French kingdom made possible the creation of an entirely new governmental system based on democratic election and on the division of France into Departments. This was done to bring about equal rights and equal protection for all citizens. The aim to achieve equality was a reaction to the excesses of the ruling classes, the aristocracy, the clergy, and the army.

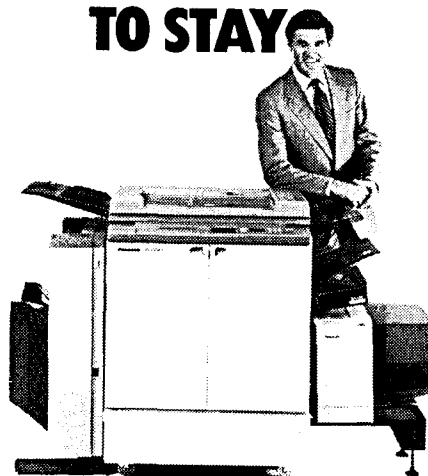
Assuring individual rights in the United States necessitated a system of rules to protect the citizen from governmental abuse by presuming his innocence and regulating the quality and burden of proof in criminal proceedings. In France, cases are under the control of the judge so that *he* can protect the citizen from any private pressure. In criminal cases, all members of the prosecution are judges, and all proofs and

evidence can be used and are known by both parties. The defendant is presumed innocent, but no lawyer will base his defense on this only. The defense almost always includes the proof of innocence. In summary, the difference between the philosophy of doing justice in the Anglo-Saxon system and that of the French system is that the former is essentially prosecutorial, the latter inquisitional.

In civil cases, a specialized judge directs the litigation by sending the opponents copies of all documents used. He is also responsible for determining the deadline for the pre-trial preparation. The trial may take place anytime after this deadline. Only a written document is accepted in the civil procedure as evidence. Other forms of evidence, usually testimony and material objects, may be used only if they meet two con-

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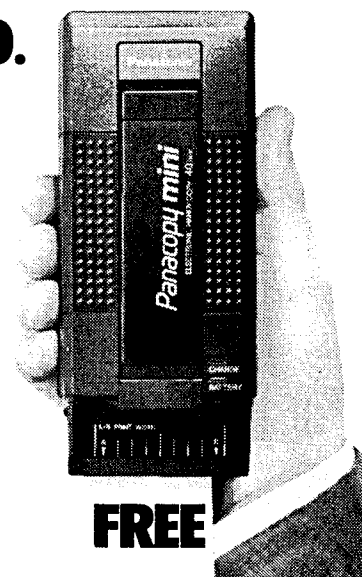


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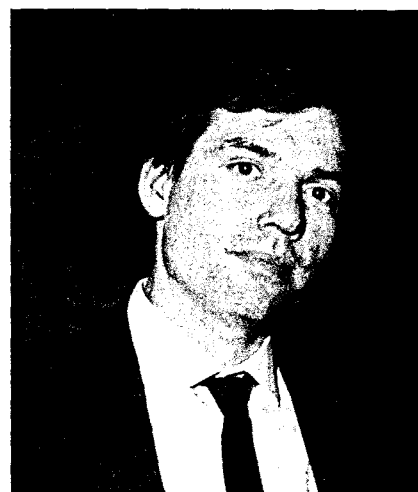
Legal Culture Shock (continued)

ditions; the judge must approve them, and they must be linked to written documents. (This rule does not cover family related cases.) The underlying supposition is that the law and the judicial system will only protect a citizen who takes care of his own interests. The ideas of equality and justice make representation by an attorney mandatory in almost all cases. If the defendant in a criminal case is too poor to afford a lawyer, the administration will automatically provide one for him, but lawyers who voluntarily register for this duty are often young and inexperienced. In a civil case, another governmental department will analyze the case and decide whether to pay all or part of the legal fees up to a predetermined limit. This department does not have the right to choose a lawyer for the plaintiff.

While the systems in both countries are designed to protect the rights and interests of citizens, the ways in which they attempt to do so are very different, in part because of historical differences. By protecting the citizen against any violation of his rights, the American

system makes the lawyer the guardian. By offering protection to the citizen against any opponent, the French system gives the judge the role of protector. In the United States, the choice of the lawyer is very important. Accordingly competition among lawyers is more fierce than in France. I also believe that an American lawyer's dedication to a client's interest is greater than a French lawyer's.

The size and the business orientation of American law firms surprised me when I first arrived. In France any kind of advertisement is prohibited and no law firm is sufficiently large to offer its services nationwide. I also have never known a French lawyer to work around the clock. The litigation periods determined by the judges are so long that such intensive work is never needed. The capitalistic society has created a competitive judicial system where the protection of the citizens comes from constitutional law and its application by the lawyers. The far more socially minded society of France wants to protect the citizens and their rights with laws applied by judges. This gives little freedom to the lawyers. ■



Jean Taquet

Mr. Taquet would like to thank Mr. John M. Amalfitano, Mr. Bruce E. Hubbard, Mr. James W. Semple, and Ms. A Ann Woolfolk for their help in preparing this article.

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BOOK REVIEW

The Enduring Constitution, A Bicentennial Perspective

By Jethro K. Lieberman,
West Publishing Company,
Saint Paul, Minn.
483 pages.

The author of this Bicentennial offering, a law professor at New York Law School, is paradoxically both modest and ambitious in his objectives, disclaiming any intention of presenting either a treatise or a full scale history. Dr. Lieberman attempts to present "... a reciprocal transformation; how the *Constitution* has influenced important relationships in American history and how these evolving relationships have influenced our understanding of the *Constitution*." He adds, "The author... must see to it that he is accurate when nuance is sometimes all. He must shed personal opinions (or most of them anyway) to make the account credible."

The work falls short of the author's goals because the relationships he has in mind are extremely complex and their interpretations are much debated. However, the presentation of the case for a continuing reinterpretation of the *Constitution* in the light of changing conditions and community opinion is effective because Dr. Lieberman has *not* "shed personal opinions." The depth of his convictions is apparent in every chapter.

This is a controversial tract. It closely follows the views of Leonard Levy and Laurence Tribe. Other liberal constitu-

tional scholars, Archibald Cox for example, and all conservative writers are ignored. Given the objectives set out in the author's preface this is not a defect so long as the reader is made aware that there are other respected views. It is entirely in order to approve of the result reached in *Roe v. Wade*. But it should be made clear that there are those who agree with the social policy implicit in such a result and who, nevertheless, believe the decision to be bad constitutional law.

The discussion of the powers of the president contains major factual errors. It places in 1938 the transaction by which the United States received leases to a series of island bases in return for the transfer to the British of fifty over age destroyers. The misdating of this transaction from the fall of 1940 to 1938 is of constitutional significance because of the outbreak of war in the fall of 1939, the overrunning of France in the spring of 1940 and the fear of the defeat of the United Kingdom during the summer of the same year. The latitude of discretion that a president may be allowed in the face of wartime threats is rather greater than that which would normally be acceptable. Moreover, the author confuses this transaction—completed entirely on the authority of the president—with "Lend-Lease" which was created by legislation enacted in March of 1941. The constitutional bases of the two are entirely distinct.

By far the greatest emphasis of the entire volume is placed upon the Bill of Rights and the Fourteenth Amendment. Dr. Lieberman quite correctly calls the latter revolutionary because it profoundly altered the previously existing relationship between the Federal Government and the states. It is from that altered relationship that so much law, both statu-

tory and decisional, has originated since the 1870s.

The author is entirely in accord with the centralization of federal power that the Fourteenth Amendment made possible. He believes the compact theory was untenable even before the Amendment was adopted. He asserts the "obvious unconstitutionality" of the Virginia and Kentucky Resolutions of 1798 and 1799. This is an argument from hindsight. The draftsmen of those Resolutions were Madison and Jefferson, and the positions they developed were used and elaborated over many years to become the philosophical underpinning of secession in 1861. What was then debatable was made obvious only by the events of the 1860s.

On much sounder ground is the long critique of the line of decisions beginning with the early Civil Rights Cases and ending in the 1930s. These decisions left both the federal and state governments powerless to deal with perceived social and commercial evils. On no constitutional theory, including that of "original intent" could the realists of 1787 have accepted such an interpretation.

Unfortunately, this volume has not been well edited. Examples abound. The footnote for page 23 refers to "Albert Bushness Hart." The correct middle name of the American historian is "Bushnell". On page 137 the text asserts that *Brown v. Board of Education* made "desegregation" unconstitutional. (Emphasis supplied) The photograph on page 205 is captioned as that of the first Justice Harlan when it is in fact that of his grandson, the younger justice. Perhaps none of these (and other) oversights are serious in themselves, but the number of them detract seriously from the entire work, leaving the impression that it was produced in excessive haste.

To summarize, this is a work of merit. It is a moderately successful synthesis of highly complex material. It should, however, be used with care. Its greatest value may well be as a counter or foil to be read in conjunction with other volumes presenting differing points of view.

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LETTERS TO THE EDITOR

Geoffrey Gamble, Esquire,
and James Dinnage, Esquire
Legal Department
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Wilmington, Delaware

Dear Sirs:

My fall issue of *DELAWARE LAWYER* came today, and yours was the first article I read. As a longtime English history buff who finally visited England last summer and saw most of the historic sights I had read about for years, I thoroughly enjoyed your paper. The colorful coats of arms are like those on the replica *Magna Carta* I bought at Lincoln Cathedral and now have framed in my office (with replicas of the *Constitution*, the *Bill of Rights*, and the *Declaration of Independence*.)

The point you made about *Magna Carta*'s being more important to Americans than Britons is one I made in my prize-losing entry in this year's Ross Essay Contest on the *Constitution*. Until I went to Runnymede I had not realized how much less regard it enjoys there—and this when they were in the middle of a huge to-do about the *Domesday Book*. Go figure.

Anyhow, you said one thing I simply must challenge: that King John could neither read nor write. I know that canard has been put about, not in the least by Isaac Asimov at page 275 of his *Book of Facts*: "Most of us learned in school that the *Magna Carta* was signed in 1215 by King John. But it was not—the monarch could not write his name. He granted the *Magna Carta* by placing his seal upon it." I don't disagree with the generality on page 175, "During most of the Middle Ages, few people, including kings and emperors, were able

to read or write. The clergy were virtually the only ones who possessed these skills," but many of the so-called facts in the book are untrue, and I think the one about King John is, too. What authority do you have for saying it?

It is obvious that sealing the Charter implied nothing about his ability to write his name; while a letter might have been signed, at that time a state document had to be sealed to be valid, and the copies were not prepared until after John (and everyone else) had left, anyhow.

Thomas Costain said of John, at page 239 of *The Conquering Family*, that [s]trangely enough, he had more of a turn for scholarship than any of the kings from William the Conqueror down, including that so-called man of learning, Henry I. He was known to have read Hugh of St. Victor on the sacraments, the *Sentences* of Peter Lombard, *The Romance of the History of England*, and *The Treatise of Origen*, which was an extensive browsing into the field of learning for a king in those days.

Costain was not infallible, I grant, but he did generally trace his facts to contemporary sources. I have always appreciated the fact that, along with refuting the other usual calumnies about Richard III, Costain took care to point out the falsity of the story that Hastings was dragged from a council meeting and summarily executed. Even some of Richard's biographers accept Morton's version (including Paul Murray Kendall), but Costain's research showed that Hastings "was tried, convicted, and executed five days later in the manner prescribed by law" (page 396, *The Last Plantagenets*).

Desmond Seward, at page 220 of *Eleanor of Aquitaine—The Mother Queen*, also said John "was much the best-read member of his family—Eleanor excepted—with a questioning interest in theology that was sharpened by his innate scepticism."

James Goldman, whose fictional book about John (*Myself as Witness*) was based on historical research, probably knew as much about it as Dr. Asimov, and he believed John read and wrote.

In matters where historians differ, I usually ask myself which point of view is likelier to be true. Given the superlative educations of both Henry II and Eleanor of Aquitaine, and given that they paid a then-unprecedented amount of attention to bringing up their children, I cannot believe they would let John grow up illiterate. I do not believe it, and I consider the allegation a slur on Eleanor, one of my heroines.

Again I ask, what is your authority for this defamation?

Sincerely,
K. Kay Shearin

(Continued on page 47)

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The Case of The "Violent Presumption"

Another Delaware Controversy That Shaped The Constitution

Harvey Bernard Rubenstein

Just after my article ("Delaware Controversies That Have Shaped The Constitution") appeared in the Bicentennial Issue of *DELAWARE LAWYER*, I received a telephone call from journalist-historian Bill Frank. He was, as usual, direct: "What about *Neal v. Delaware*? Why wasn't that case included?" My assignment was limited to the three cases discussed in the article, but I agreed to look at the *Neal* case. I have.

On May 11, 1880, William Neal, a black man, was indicted by a Delaware grand jury for the crime of rape, a capital offense. Counsel assigned for his defense sought to remove the case to the federal court under the federal removal statute on the grounds that the petit jurors summoned to try the case were all white, that blacks were, and always had been excluded from service on juries, and that the defendant would be denied the equal protection of the laws enjoyed by whites.

Nevertheless, the Delaware Court denied removal and refused to quash the indictment and panels of jurors, the defendant was tried before an all-white jury and found guilty, and on May 27, 1880, 16 days after his indictment, the defendant was sentenced to hang. Upon writ of error to the United States Supreme Court, argument was held on March 21 and 22, 1881, and the decision was rendered on May 2, 1881. Justice John M. Harlan delivered the Opinion of the Court, with two justices dissenting, reversing the Delaware Court and voiding the conviction. *William Neal v. State of Delaware*, 103 U. S. (13 Otto) 370, 26 L.Ed. 567 (1881).

The first issue was whether the case should have been removed to federal court. The 1831 Delaware Constitution (Article IV, Section 1) limited the right of

suffrage, and consequently the ability to serve as jurors, to "white" males. Justice Harlan for the Supreme Court held that the adoption of the 14th and 15th Amendments to the United States Constitution effectively removed and rendered inoperative the word "white", and, thus, there was no State law forbidding the selection of black jurors, even though the State never formally abrogated the restriction. Accordingly, said Justice Harlan, the removal of the case properly was refused since, under the federal removal statute, any alleged discrimination was not the result of the Delaware Constitution and laws.

The second issue was whether, notwithstanding their right to serve as jurors, blacks were, in practice, excluded from jury panels because of race. At the argument before the Supreme Court, it readily was conceded that blacks always had been excluded from juries in Delaware courts. The same concession, according to Justice Harlan, had been made by the Delaware Court itself, the Chief Justice of Delaware commenting:

That none but white men were selected is in nowise remarkable in view of the fact—too notorious to be ignored—that the great body of black men residing in this State are utterly unqualified by want of intelligence, experience or moral integrity, to sit on juries.

There were exceptions, said the Delaware Chief Justice, but they were rare.

Justice Harlan explained that a black defendant was not entitled to have his race represented on the jury, but he was entitled, in the selection of jurors, that blacks not be excluded because of race. In its decision, the Delaware Court had held that, aside from the absence of blacks on jury panels, the defendant had offered no affirmative proof of exclusion.

Justice Harlan held differently. He found that the Attorney General and the defense counsel had agreed, with the assent of the Delaware Court, that the allegations in the removal petition would be given the same force and effect as if made and verified by the defendant in a separate and distinct affidavit.

Justice Harlan also found that the Attorney General never controverted the allegation that officers of the State purposely excluded blacks from juries and that when the defendant moved to have those officers produced as witnesses, the Delaware Court had sustained the Attorney General's objection on the ground that the motion came too late. Justice Harlan acknowledged that perhaps the Delaware Court's ruling, denying an opportunity to submit proof of exclusion, was "not the subject of review", but nevertheless he remarked, "with entire respect for the court below, that the circumstances, in our judgment, warranted more indulgence, in the matter of time, than was granted to a prisoner whose life was at stake, and who was too poor to employ counsel of his own selection."

Justice Harlan then ruled that the showing that no black had ever been summoned as a juror in any Delaware court, although the black population exceeded 20,000 in 1870 and 26,000 in 1880, was a *prima facie* case of the denial of equal protection under the United States Constitution. He then commented:

It was, we think, under all the circumstance, a violent presumption which the State Court indulged, that such uniform exclusion of that race from juries, during a period of many years, was solely because, in the judgment of those officers, fairly exercised, the black race in Delaware were utterly disqualified, by want of intelligence, experience or moral integrity to sit on juries.

In the ensuing years, *Neal* has been cited in both federal and state court decisions. Most recently, the Supreme Court cited *Neal* in *Vasquez v. Hillery*, 106 S.Ct. 617, 622 (1986) and *Batson v. Kentucky*, 106 S.Ct. 1712, 1716 (1986), for the proposition that the exclusion of black jurors on account of race violates the federal Equal Protection Clause. Only the cases headlined by *Strauder v. West Virginia*, 25 L.Ed. 664 (1880), constitute older authority. *Batson* is particularly significant because it holds that even peremptory challenges cannot be used

to exclude blacks from the jury because of their race.

Neal was, and still is, a significant holding prohibiting the exclusion of blacks as jurors because of their race. In that respect, *Neal* might be viewed only as an interesting historical footnote to a well-established constitutional principle. It is, however, more, for it is difficult to read *Neal* without being offended by the "violent presumption" given expression by the Delaware Court. One may ask: Why did the case have to go to the Supreme Court before the "violent presumption" was shattered? Why—even 100 years ago—wasn't the Delaware Court responsive to that constitutional necessity?

Neal is a reminder that the courts should ever remain alert to ingrained unconstitutional action by those who are responsible for administering our system of justice. ■

The Unfinished Bicentennial

The celebration of the Constitution and ratification marks only the beginning of a four-year national examination of our freedoms. It will conclude with the 200th anniversary of the adoption of those amendments to the Constitution, known as the Bill of Rights. In our last issue, Harvey Bernard Rubenstein, who is also the very able Editor of *IN RE*, the Delaware Bar publication, wrote about three Delaware cases of Constitutional importance, which were of more recent vintage. Mr. William Frank of the *News-Journal Papers* suggested to Harvey another, earlier Delaware case of exceptional interest. We thank them both for bringing it to our readers' attention. It should also be noted that Mr. Frank was the winner in 1986 of the Bar Association Liberty Bell Award—a fitting tribute to one of the most vigilant defenders of civil liberties in this state.

NOTICE

The Board of Editors wish to thank Chief Justice Andrew D. Christie for his thoughtful and generous action in donating to the Bar Foundation an honorarium of \$1,000 paid by the National Center for State Courts for an essay submitted by him to the Center for inclusion in a commemorative Bicentennial volume published by that body.

Letters (Continued)

We reply:

I have read Kay Shearin's exceptionally interesting and entertaining letter of September 19, and I intend to print it, together with your response, if any. I have always admired Richard III as a seemingly decent, pious, and cultured King. He has had a bad press, and the case against him beginning with St. Thomas More's artfully dishonest account is ridiculous. I share Walpole's "historic doubts". But the last thing I can afford to get the magazine into is a renewed squabble over the guilt or innocence of that monarch.

One reason I want to print Kay's letter is that it affords me the opportunity of apologizing to Geoffrey Gamble for failing to note that the elegant color illustrations to the article in the Bicentennial issue were the product of his artistry.

Finally, let me put my two cents worth in about King John's literacy. In The Adventures of Robin Hood (Warner Brothers, 1938), Claude Raines as wicked Prince John (later King John) signs a document in the presence of equally wicked Nottingham Sheriff Basil Rath-

bone. If Jack Warner, Errol Flynn, Basil Rathbone, Olivia DeHaviland, Claude Raines, Alan Hale, Eugene Pallette, Una O'Connor, and Natalie Kalmus (technicolor consultant) are convinced that King John could read and write, that strikes me as virtually dispositive. Furthermore, if you examine the Bicentennial issue article on Jacob Broom, you will find that the faintly ridiculous Reverend Campbell regarded Henry II as, if anything, somewhat more cultured than Samuel Johnson. I incline to Kay's view that John was literate.

Your comments invited.

WEW

The authors respond:

The Messrs. Gamble and Dinnage concede that the available evidence, albeit circumstantial, does indeed suggest that King John was literate. They pray that Ms. Shearin will not cause a writ of De Gestu et Fama to be issued against them.

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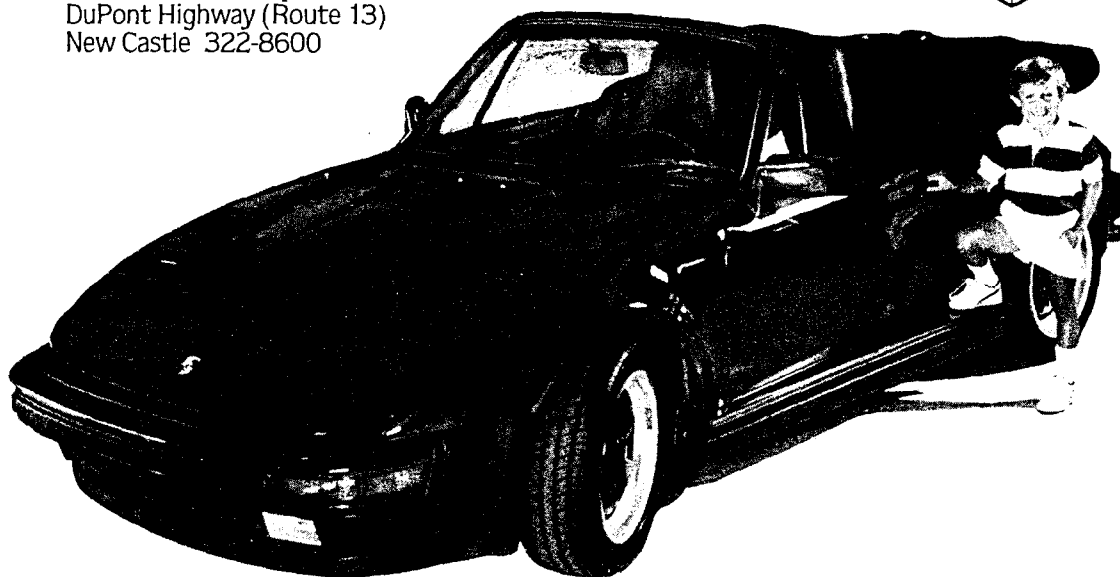
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