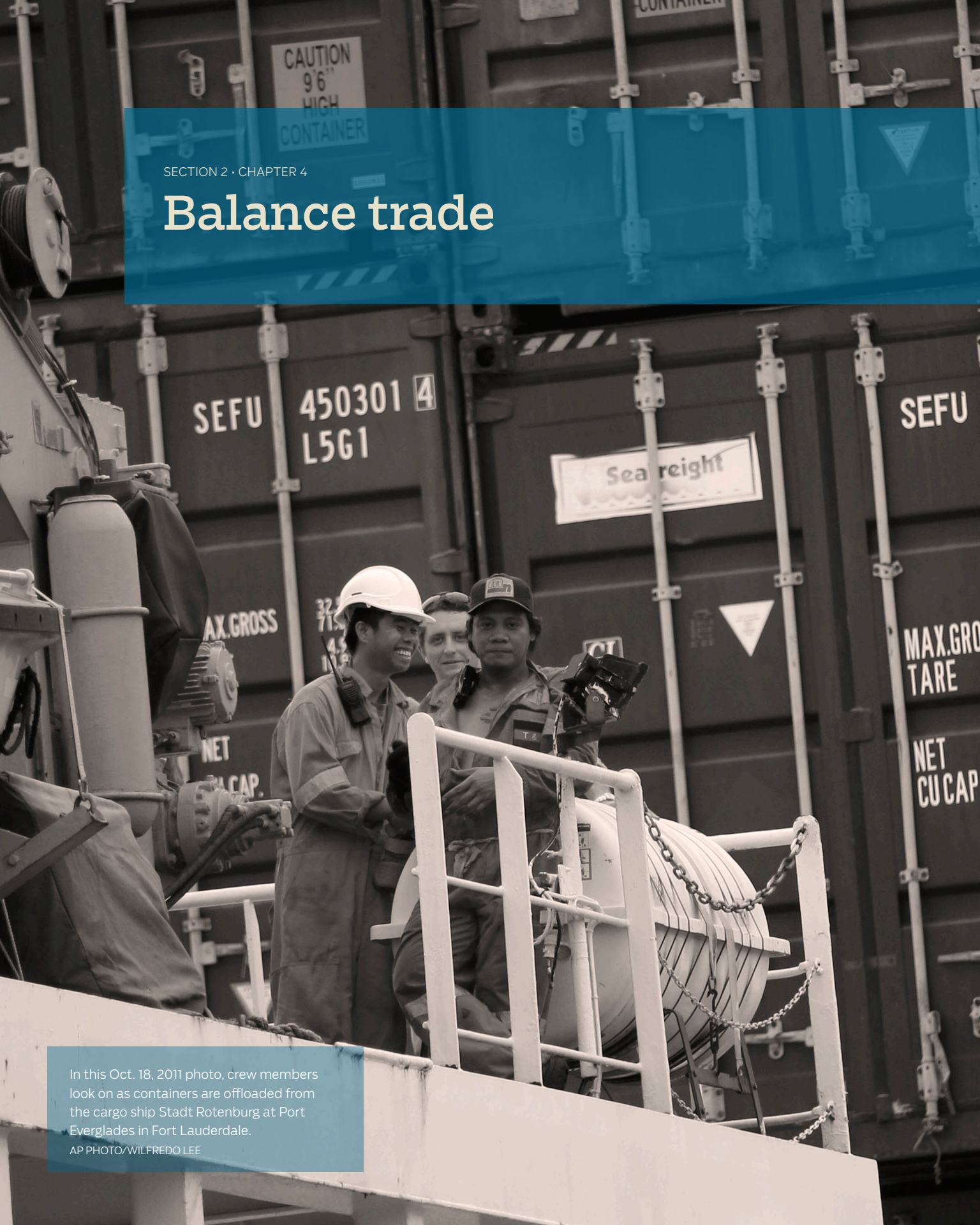


SECTION 2 · CHAPTER 4

Balance trade



In this Oct. 18, 2011 photo, crew members look on as containers are offloaded from the cargo ship Stadt Rotenburg at Port Everglades in Fort Lauderdale.

AP PHOTO/WILFREDO LEE

Goods and services trade—exports plus imports—now account for nearly one-third of overall U.S. economic activity,² meaning trade’s importance to the economy has never been greater. The United States is the world’s largest exporter,³ with exports directly supporting an estimated 9.7 million jobs.⁴ At the same time, the United States is also the world’s largest importer, and herein lies the problem. Over the past 30 years, our trade balance has been shifting in the wrong direction—toward more imports than exports—and reached a \$560 billion deficit in 2012.⁵

While imports can be a boon to U.S. economic productivity and American living standards, providing consumers and business with access to a larger variety of goods and services at lower costs than would otherwise be the case, there is also a price to pay.

Mounting trade deficits present two key problems for the U.S. economy. First, the economic benefits made possible by import-

ing also carry offsetting costs, including job losses domestically. Second, in order to pay for the imports from abroad that exceed U.S. exports, the U.S. economy must balance this trade deficit by selling assets—stocks, bonds, and other assets such as companies and real estate—to overseas purchasers.

Our trade imbalance has resulted from a number of factors. One is, of course, the

rapid industrialization of developing-country economies, which are now becoming more able to compete with the United States in terms of the range and sophistication of what they produce. At the same time, as documented elsewhere in this report, the United States has failed to keep up with some of the basic building blocks of competitiveness. But another reason we've lost ground is that the rules of the road for trade are outdated, too easy to violate, and too difficult to enforce—and oftentimes countries are too willing to violate international norms and laws.

Other countries' bending of the rules of trade is a problem we must address. But, realistically, we must strike a balance between the need to take strong, appropriate action to protect U.S. interests and the risk of other countries taking actions that could be extremely damaging to our economy. We must recognize that we are dealing with sovereign nations that have their own interests and their own objectives and do not necessarily see their actions and positions the way we see them. After all, for a country that is trying to raise the living standards of large swaths of people living in poverty and that sees the rise of advanced-economy countries as not entirely the consequence of honorable behavior, bending the rules can appear to be a virtuous and astute economic strategy.

That said, the purpose of the legal arrangements for trade is explicitly to balance the interests of all parties' involved to promote shared prosperity and rising global living standards. Once those agreements are in

place and international norms are set, we cannot tolerate our trading partners violating agreed-upon terms at our expense. Inaction leaves American businesses and workers at a global disadvantage and undermined by a tilted competitive playing field.

In fact, the entire world economy is hurt when damaging economic distortions that have been carefully negotiated through trade agreements are allowed to creep back into the system. Violating the rules undermines the incentives for innovators and creates incentives for producers to move to less efficient locations. If global trade rules are not enforced, then the architecture of world trade is undermined, as distrust in trade relations leads more and more countries to shirk the responsibilities of a rules- and norms-based system.

What is best for the U.S. economy and for all the economies of the world is a set of clear, enforceable rules in international trade and investment, consistently enforced. Such rules, in conjunction with improved U.S. competitiveness, appropriate export promotion, and an eased path for foreign direct investment in the United States, are the keys to balancing U.S. trade and allowing U.S. businesses and workers to compete fairly and successfully with the rest of the world.

We propose policies to:

- Require greater monitoring and transparency by trade enforcement agencies, automatic enforcement actions where appropriate, and greater enforcement resources and authority to conduct these activities

Trade

Problem: The United States imported \$5.9 trillion more than it exported over the past 10 years.¹ This trade deficit resulted in lower growth, fewer jobs, and higher inequality in the United States—all of which impede the prosperity of America's 300 million engines of growth.

Solution: Aggressively enforce a fair playing field on which American businesses and American workers can compete, by making some enforcement actions more automatic, broadening enforcement tools, improving employment and labor practices abroad, and promoting exports and foreign direct investment.

Key policy ideas:

- Double the original funding of the Interagency Trade Enforcement Center to \$52 million annually.
- Create a process of “automaticity”—a clearly prescribed chain of enforcement actions that kick in for clear-cut trade violations as tracked via a National Trade Compliance Database.
- Enforce a currency misalignment trigger that will identify countries with misaligned currencies and trigger a timeline to begin counter-vailing tariffs within 90 days.
- Strengthen and clarify international law around state-owned enterprises to ensure fairer competition.

Other policies that will lead to more balanced trade include promoting exports and foreign direct investment, as well as promoting a virtuous circle where quality jobs that offer appropriate compensation and respect labor rights and social protections will advance the development of the global middle class, which is good for workers abroad and workers here at home.

Outcomes: Trade will be balanced by 2022. ■

- Introduce a currency misalignment trigger to address undervalued currencies
- Clarify international law to hold state-owned enterprises accountable to mutually agreed-on rules and norms of trade
- Enact a set of policies focused on intellectual-property rights infringements
- Promote the creation of quality jobs to increase import demand in presently export-driven economies
- Expand export promotion
- Increase efforts to attract foreign direct investment to the United States

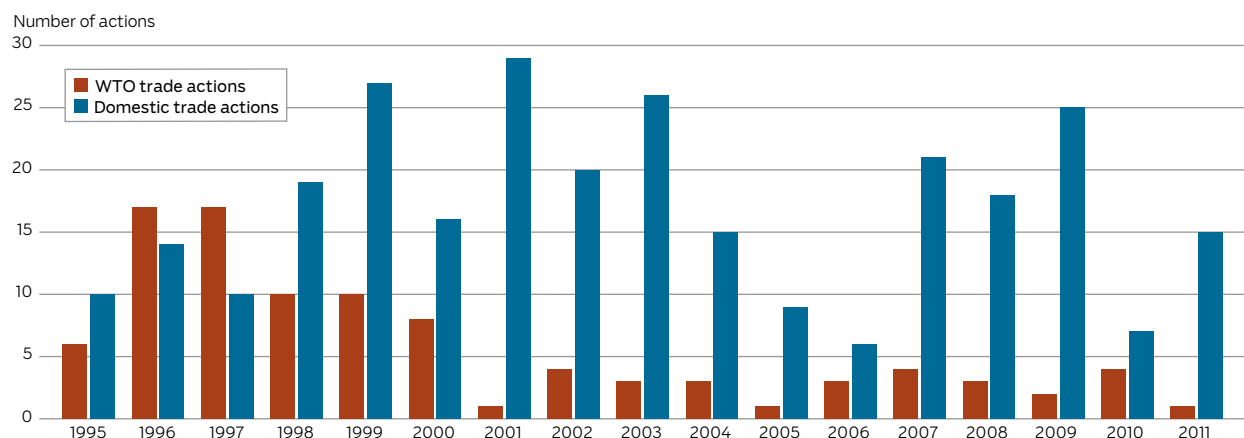
In addition to the policies outlined in this section, rebalancing trade will require other parts of the larger economic plan identified in this report to come into effect to make U.S. workers and businesses better equipped to compete.

Policies that increase monitoring and play a more active role in initiating trade cases

The current system in the United States for dealing with trade violations is cumbersome. Our trade enforcement agencies rely too heavily on American workers and American businesses to be the initiators. Those seeking redress are often forced through an arduous, lengthy, and arbitrary process and are potentially subject to retaliation by the coun-

FIGURE 9

Trade actions initiated, 1995 to 2011



Source: Chad P. Bown, "Global Antidumping Database" (World Bank, 2012), available at <http://econ.worldbank.org/ttbd/gad>; Chad P. Bown, "Global Countervailing Duties Database" (World Bank, 2012), available at <http://econ.worldbank.org/ttbd/gcvd/>; World Trade Organization, "Dispute Settlement Database," available at http://wto.org/english/tratop_e/dispu_status_e.htm

try against which they petition. Remedies are often slow in coming, particularly when the enforcement mechanism is through the World Trade Organization, or WTO. Because of a lengthy adjudication process, by the time remedies are put in place, irreversible damage has sometimes already occurred.

Despite the growth of trade and the scope of infractions, there has been a relatively low level of trade cases initiated over the years (see Figure 9).

But that's not because U.S. representatives can't win these cases. According to an August 2012 publication by the Office of the U.S. Trade Representative, or USTR, since 1995 the United States had filed 99 complaints, of which 71 had been concluded. Of these cases, 67—or 94 percent—were resolved either to U.S. satisfaction without completing litigation, or the U.S. won on the core issues, leaving only four cases in which the United States did not prevail.

So, while the United States has a very good track record, at an average of fewer than six cases per year, we don't contest violations as often as we should. That is why the Obama Administration's efforts to streamline efficiency in U.S. trade policy with the Interagency Trade Enforcement Center (ITEC) is so important. There are certainly more violations occurring than are disputed, and other countries should know that U.S. officials are willing to bring cases. Trade sanctions cannot serve as a credible deterrent

unless there are expectations that rules will be enforced.

The goal, then, is for the trade agencies to be much more active in bringing cases. Focusing on WTO complaints, historically USTR tends to only bring cases that it believes it is highly likely to win. The strategy is driven in part by the desire to minimize diplomatic fallout, but the net effect is fewer cases brought and less redress for U.S. parties injured by the flouting of trade rules.

To make progress in addressing trade violations by other countries, we must give U.S. trade agencies the tools and the authority they need to take more actions on their own, as well as seek improvement in international enforcement bodies. These new mechanisms must ensure that our trade partners know we will respond speedily and forcefully to any clear-cut violations.

To accomplish this, we propose:

- More transparency, accountability, and action via changes to the National Trade Estimate Report, the creation of a National Trade Compliance Database, and better statistical information
- More enforcement capacity by allocating \$52 million to the Interagency Trade Enforcement Center and giving subpoena power to the United States Trade Representative

Automaticity in trade enforcement

One approach that we rely on in several of our recommendations is to make trade enforcement more automatic. “Automaticity” is defined as an automatic chain of events that ensues upon the finding of a trade infraction. This concept of automatic policy responses is not foreign to the world trading system and is incorporated in aspects of the WTO’s governance structure in “automatic chronological progression for settling trade disputes.”⁶ We propose applying this mechanism in U.S. domestic trade laws.

Taking some element of discretion out of whether to bring enforcement actions for certain types of violations has two benefits. First, it takes the burden of initiating complaints off of corporations and unions. This is particularly important because multinational corporations are reluctant to initiate action against countries in which they do business or where they would like to gain market access because those countries might retaliate. Second, by taking some discretion out of the hands of government officials, automaticity relieves the officials of some of the pressure from outside interests to refrain from taking action. While discretion can never be completely removed, nor should it be, automaticity tilts the decision making toward more active enforcement.

- Advocacy by the United States for improved WTO rules to ensure faster and more effective remedies

Increase transparency, accountability, and action

Better enforcement of trade rules must begin by improving the way we monitor trade flows, industry dynamics, and the policies, laws, and trade practices of partner countries. Current monitoring and enforcing rules of international trade often rely on ad hoc and arbitrary processes that result in few enforcement actions after damage has already been done to U.S. businesses, workers, and communities.

To address this, in conjunction with proposals in later sections, we propose the following policies.

Make the Trade Barriers Report a more effective tool

The National Trade Estimate Report on Foreign Trade Barriers, also known as the “Trade Barriers Report,” is published by USTR each year and tracks trade barriers in 62 trading partner nations.⁷ The report provides a trove of information on areas where American workers and American businesses are being disadvantaged by unfair trade practices.

Two ways it could be a more powerful tool would be for it to summarize, by country,

what actions our trade enforcement agencies are taking to address listed infractions, and to summarize what additional tools—either in the form of changes to U.S. laws, regulations, or practices, or changes to international agreements—would make it easier for agencies to enforce trade rules.

Launch the National Trade Compliance Database to catalog compliance with clear, quantifiable trade rules and trigger their enforcement

When determining if a country is fulfilling its trade obligations, there are some categories for which it is readily apparent whether the country is in compliance or not—for example, negotiated tariff reductions on traded goods. For clear-cut compliance categories, the United States should have a policy of automating, to the extent possible, certain aspects of trade enforcement and detailing in advance the actions that will be taken when a violation is found.

To facilitate this, we propose the creation of a National Trade Compliance Database that will list all of the provisions in our trade agreements that are quantifiable and clear cut, what the available remedy is under that trade law, whether there is a current violation, and what steps have been initiated by U.S. trade agencies to bring the violating country into compliance. Upon a finding of noncompliance, agencies would be required to begin seeking the pre-specified remedies. There would be no waiting for a complaint from a business or union—there would simply be action.

As the United States moves forward with new trade agreements such as the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership, it will be important to make rules and remedies more straightforward and amenable to this approach to enforcement.

Consider two examples of WTO violations where automaticity would compel a WTO claim under this policy:

- Export restraints: China's WTO accession protocol stipulates that China can impose specified export duties on no more than 84 items. Yet 352 products are expected to face export duties in 2013.⁸ This constitutes a clear violation of China's WTO obligations.
- Failure to submit required notifications: Another common trade violation occurs when a country fails to submit required notifications to the WTO on its trade policies, subsidies, or customs and import-licensing procedures. The Indian government, for instance, frequently fails to notify the WTO about new rules or publish information in its Official Gazette.

Expand businesses' statistical reporting to include financial and operating data for the consolidated business entity on a global and country-specific basis

Current statistics allow the government and private analysts to understand business activity within the U.S. economy. But what is needed to better analyze and understand the competitive position of individual businesses,

specific industries, and the overall U.S. economy—including how trade violations affect businesses—is information on how U.S. business operations and workers fit into the larger global economy.

Much of this information is readily available to authorities through data reported to U.S. national statistical systems. More information should, however, be collected in conjunction with other reforms to modernize the U.S. statistical infrastructure in order to allow a comprehensive analysis of the global nature of many industries' production and supply chains, to improve detection and enforcement of trade-law violations, and to facilitate National Economic Strategic Assessments, as we propose in this report.

Increase enforcement capabilities

The measures we describe to improve monitoring and make enforcement more automatic will lead to better enforcement of trade laws, but to achieve our goals, agencies need more resources and more authority to carry out this mandate. In 2012 President Obama requested \$26 million to create the Interagency Trade Enforcement Center, or ITEC, a new department within the U.S. Trade Representative's office, to increase the number of trade lawyers and investigators available to handle trade cases, coordinate trade enforcement actions among agencies, and leverage more aggressive enforcement across the government. ITEC presents a huge opportunity to advance enforcement efforts.⁹

Funding the Interagency Trade Enforcement Center with \$52 million—a doubling of the initial authorization request—would both help alleviate the USTR's capacity constraints and leverage more aggressive enforcement for the better-endowed International Trade Administration. Raising ITEC's funding would be a smart investment in ensuring that America's industries and workers can compete on a fairer international playing field.

In addition, the USTR should be granted subpoena authority, which would serve two purposes. First, it would give cover to companies that want to cooperate but fear retaliation. Second, subpoena authority would enable the USTR to gather the information it needs to move ahead. Rules would, of course, have to be developed to appropriately circumscribe the scope of the authority.

With all these measures, trade agencies would therefore be expected to launch more investigations and seek redress without waiting for a business or union to file a petition. Trade violators' reliance on U.S. inaction is a status quo that is long past due to expire.

Institute stronger mechanisms at the WTO

The United States should be leading an effort within the WTO to make enforcement more effective. Bringing a case, waiting for three years for it to be adjudicated, and then making the remedy prospective—thus rewarding the violator for three or more years of behavior in violation of the rules—is not the path



A man counts U.S. dollars at a currency exchange outlet in New Delhi, India, Jul. 29, 2011.

AP PHOTO/MANISH SWARUP

to a world of fair trade that causes all boats to rise, as was originally envisioned. The WTO's lack of ability to enforce in itself works as a barrier to trade since illegal practices are allowed to persist. While revamping the WTO enforcement mechanism is obviously a complex task that will take long years of negotiation, it is an important one.

Policies to introduce a currency misalignment trigger

Another important application of the principal of automaticity relates to undervalued currencies where countries are intentionally

seeking an unfair trade advantage by distorting the relative price-levels of goods traded between countries. Though it is important to note that countries may have good reasons to manage their exchange rates—for example, to maintain financial stability—both the World Trade Organization and the International Monetary Fund proscribe exchange-rate policies intended to upset the balance of trade. These institutions have not, however, taken the initiative to address this problem.

Current U.S. policy under the 1988 Omnibus Trade and Competitiveness Act, requires the Treasury secretary to twice a year submit to Congress a written assessment of interna-

tional exchange rate and economic policies affecting the U.S. economy. The goal of this is to identify and address exchange-rate misalignments and other policies of trading-partner countries that lead to material imbalances in the United States' current account, which measures the balance of exports and imports plus the balance of income flows between the United States and other countries. When the Treasury Department identifies problems, the law requires the secretary to enter negotiations with offending countries to achieve realignments consistent with reducing current account imbalances.

Current U.S. policy suffers three key problems. First, the policy's ambiguity is compounded

by its neglect in specifying clear thresholds for assessing exchange-rate misalignments, current account imbalances, and official accumulation of U.S. dollar foreign-exchange reserves. Second, it leaves too much open to discretion, leaving decision makers too vulnerable to outside pressure as they decide whether to identify countries as using currency to unfairly skew the balance of trade with the United States. Third, the policy provides no credible penalties to endow U.S. officials with the bargaining power they need to succeed in negotiations when a partner country's exchange rate and economic policies are problematic.

We propose a currency misalignment trigger.¹² Under our proposal, a combination of

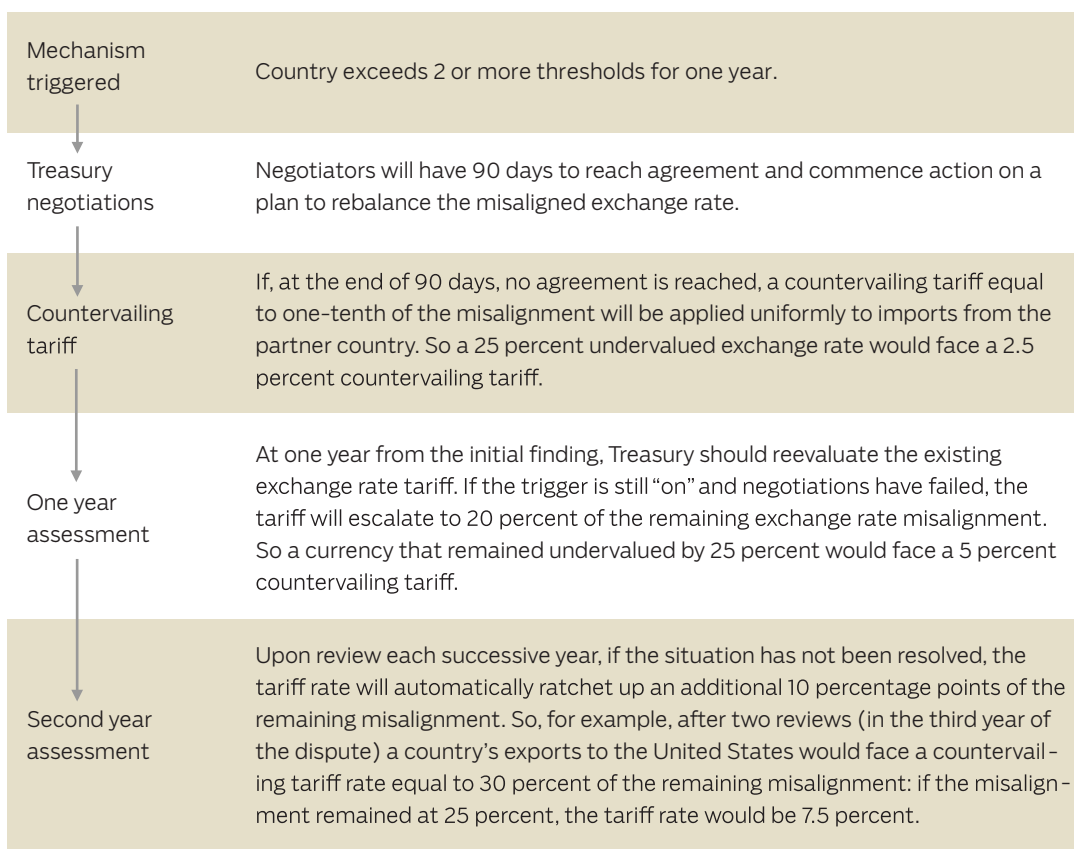
China's currency misalignment

While China provides the highest-profile example of how exchange-rate manipulation and related international economic imbalances can harm the U.S. economy, economist Joseph Gagnon identified the top 20 countries engaged in "currency manipulation" in the 2000s, proving the problem is bigger than any one country.¹⁰

Persistent U.S. bilateral imbalances with China illustrate both the difficulties in redress and the importance of considering exchange rates alongside broader factors contributing to unbalanced trade. For years, China maintained an exchange rate pegged to the U.S. dollar at a fixed level widely perceived as undervalued. The practice effectively makes Chinese exports cheaper for buyers in the United States, and makes U.S. goods more expensive for consumers in China and elsewhere in the world. What's more, from an employer's perspective, the exchange rate makes U.S. wage costs seem artificially higher and Chinese wage costs and investments in Chinese production facilities artificially lower, thus denying U.S. workers the opportunity to compete on a fair playing field. China's currency policy contributed to the U.S. trade deficit with China growing to nearly \$300 billion in 2012, according to Bureau of Economic Analysis statistics.¹¹

Remedying China's exchange rate would be a significant step toward ensuring a fairer competitive playing field and a more stable global economy.

FIGURE 10



exchange-rate misalignment, current account imbalances, and official accumulation of U.S. dollar foreign-exchange reserves surpassing explicit thresholds would trigger an automatic response requiring the Treasury secretary to enter negotiations with offending partner countries. Then, should those negotiations fail, escalating countervailing duties would start to go into effect.

The thresholds for the trigger are:

- Exchange-rate misalignment greater than or equal to 10 percent, relative to the level

estimated by an analysis of fundamental equilibrium exchange rates, or FEER. Such estimates calculate exchange-rate adjustments needed to achieve medium-term adjustment of international economic imbalances, a key policy goal for the United States and the international monetary system.¹³

- Bilateral current account deficit exceeding 5 percent of the total U.S. current account deficit.
- Dollar foreign reserve holdings exceeding 12 months of expected imports and total

(public and private) short-term external debt obligations.

Under our proposal, the Treasury would report on each of these indicators in its periodic reports to Congress on international economic and exchange-rate policies. Two of the three conditions being met and sustained for one year would trigger an automatic response from the Treasury, requiring negotiations with the offending trading partner. Note that we recommend that there be no official label of the countries identified in this process as a “currency manipulator.” The country would simply be one with a currency misalignment, subject to negotiation and remedy.

After identification of a country by the threshold test, the Treasury would face a strict timeline for negotiations. If a plan to rebalance the misaligned exchange rate is not agreed to within 90 days, then, as shown in the accompanying chart, gradually escalating countervailing tariffs would take effect.

Critically different from the current approach on exchange-rate misalignment and international imbalances, this policy, once triggered, sets in motion a sequence of automatic policy actions with incrementally escalating countervailing duties that give trading partners an incentive to resolve imbalances with the United States.

We propose, however, that the president have the authority to halt the imposition of the countervailing tariff if he specifies reasons why implementing them would be inconsistent with achieving other national priorities

with partner countries. The currency misalignment trigger should not, for example, prevent countries from adopting emergency exchange-rate policy measures in response to potential international financial stresses or broader crises, as occurred in Japan following the 2011 tsunami.

But setting the default toward action, instead of inaction, strengthens the U.S. hand in international trade relations and gives certainty to the consequences of violating international rules and norms on exchange rates without forcing actions so drastic as to be counterproductively disruptive to the economy.

Such a policy would be strengthened if adopted by other countries, and the United States should encourage its widespread adoption.

Policies that strengthen international law to hold state-owned enterprises to agreed-upon standards

In the highly competitive global economy, many countries are developing strategies to support industries that can expand exports. One way to do this is through subsidies. But deploying prohibited or excessive subsidies that cause material injury to trading partners or failing to notify the WTO and trading partners of the full extent of subsidies constitutes a trade violation that injures U.S. workers and firms.

The WTO’s Agreement on Agriculture and the Agreement on Subsidies and Countervailing

Measures outline which subsidies are illegal and eligible for action. U.S. trade remedies law also includes countervailing duty provisions that offset foreign government subsidization of imported goods when subsidization is found to cause or threaten material injury to a domestic industry.

But remedying illegal subsidies in practice is complicated by three closely related factors:

- **Difficulty in differentiating between normal business activities and business subsidies in non-market economies:**

Business subsidies, by definition, involve government support for business activities. To determine whether such support exists, one has to differentiate between what is “government” and what is “business.” In the United States, Western Europe, and other market economies, this is usually easy. But for nonmarket state capitalist economies, this can be quite difficult. Massive state involvement in the economy—especially in state-owned enterprises involved in finance, production, and distribution—is much more prevalent in these countries. It can be challenging to ascertain when a government entity that operates as a business is behaving as a regular business or when, through its business transactions, it is subsidizing another domestic business at the behest of the government. Even ostensibly private entities in such countries can be so closely connected to the state through either formal or informal relationships that they, too, can be providing subsidies at the behest of the government. A related problem is that it is difficult to determine if a state-owned

enterprise is itself being subsidized by the government with which it, in some fashion, shares its financial books or if it is operating in a straightforward, business-like manner.¹⁴

- **Ambiguity in the definition of a state-owned enterprise:**

This complication spills over into the world of trade law. Under the WTO, monetary assistance can only be called a subsidy if the government or a “public body” provides it. But the meaning of “public body” is not well defined. The WTO’s Appellate Body, in a recent case, found that a state-owned enterprise is a “public body” if it “possesses, exercises, or is vested with government authority.”¹⁵ As a practical matter, this means that the International Trade Administration must now, on a case-by-case basis, determine if entities are “vested with government authority” in bringing actions to impose countervailing duties. That requires looking at the law under which the entity is incorporated, actions by the entity or its management, and whether the government exercises “meaningful control” over the entity. Such an investigation is difficult in countries where the relationships that define these things are often opaque.

- **Complexity of discerning the existence and scale of the subsidy:**

In state-capitalist economies, a company may be heavily under the influence of the state for some purposes and not others, and it may be motivated by the desire for profits for some purposes but motivated by state interests for others. And a subsidy for a business may come more in the form of the cumulative



Port of New Orleans Napoleon Container Terminal is seen on the Mississippi river.
AP PHOTO/JUDI BOTTONI

impact of such a system than from single, clear-cut transactions. The accumulation of preferred access to bank capital, below-market-rate financing, favorable tax treatment, capital injections, and other advantages may add up to a meaningful subsidy even if no individual subsidy is of much significance. This makes it difficult to discern when and where illegal subsidization occurs and what the scale of the subsidy is.

A great deal of energy and resources are applied to resolving these ambiguities when a particular case calls on authorities to do so. The effort required effectively limits the feasibility of fully addressing the problem of U.S. businesses and workers trying to compete

against subsidized competitors. Solving this will be difficult, but the United States should try to ensure that our government agencies are in the best position possible to address illegal subsidies and that the WTO's rules enable rather than hinder aggressive enforcement.

To do this, the United States should:

- Push the WTO to more broadly define what a “public body” is and when a business is acting as a public body, so that all the various mechanisms through which governments may deliver subsidies are accountable under international trade law. In addition, the WTO rules need to be revised to set more clear-cut param-

eters for determining what activities are done at the behest of the government, how businesses benefit from their association with government, and what the cumulative level of subsidy is. There should be presumptions of subsidy when specified thresholds of government engagement are met and when there are benefits that appear to be better than obtainable on the open market.

- Negotiate rules in new trade agreements that ensure state-owned enterprise operations are consistent with the principles of “competitive neutrality.” That is, public-sector business activities that are in competition with those of private-sector entities should not have competitive advantages simply by virtue of their government ownership or control. These rules are immediately relevant for the Trans-Pacific Partnership negotiations currently underway.
- Require in new trade agreements that countries report their state-owned enterprises and the countries in which they operate, and that the enterprises provide basic data on operations and financials to their trading partners on an annual basis.

Policies that address intellectual-property infringements

Innovation is critical to economic growth and competitiveness. The exploitable value of innovation resides in the form of intellectual

property, making intellectual property, like all valuable things, a target for theft. Policing intellectual-property theft is, however, much harder than tracking down a stolen car. In areas where technology is rapidly evolving, it is often difficult to tell whether an evolution is based on a stolen idea with a few enhancements or constitutes something fresh and new. Additionally, there are many complicated relationships between individuals and companies that make standards for ownership and conditions for transfer of ownership of intellectual property unclear.

Intellectual-property issues extend far beyond the unlicensed production of pharmaceuticals, software, and other media to valuable industrial technologies and organizational practices. Intellectual-property issues have as much to do with foreign direct investment rules that require technology transfer as they do with protecting information technologies from outright theft.

The protection of intellectual property is essential for an innovation-based economy such as the United States. Based on its own research and extensive consultation with stakeholders, USTR compiles a “priority watch list” of countries that have extensive intellectual-property rights, or IPR, infringements.¹⁶ USTR identified 13 countries on the priority watch list in 2012: Algeria, Argentina, Canada, Chile, China, India, Indonesia, Israel, Pakistan, Russia, Thailand, Ukraine, and Venezuela.¹⁷ USTR focuses its IPR-enforcement efforts on the countries that are on the list. But as of now, USTR relies heavily on bilateral dialogue as the best

way to resolve IPR disputes. If that doesn't work, it goes through the World Trade Organization's dispute settlement procedures. But this way of dealing with countries that violate intellectual-property laws is not a significant enough deterrent. The U.S. International Trade Commission estimated that "U.S. firms' reported losses from IPR infringement in China amounted to about \$48 billion in 2009."¹⁸ These are not just dollars lost but in some cases are businesses and jobs lost as well.

To protect U.S. intellectual properties, the United States government should:

- Include obvious forms of intellectual-property-rights rules in the National Trade Compliance Database. An example of an IPR requirement that could be put in the database would be government use of only licensed copies of protected software.
- Establish a 90-day time limit for negotiations with WTO member countries that are on the Special 301 Priority Watch List. After that, cases would be referred to the WTO's dispute-settlement board and the appellate body if needed. The board's authority to issue decisions that allow the United States to impose trade sanctions would put pressure on the infringing country to not drag out negotiations. If the United States and the infringing country have signed other agreements that have IPR protections, USTR would have the option of using dispute-resolution mechanisms or remedies specified in those agreements instead of going to the WTO.
- Use new trade agreements as opportunities to define consequences of different forms of IPR infringements. The Trans-Pacific Partnership negotiations, for example, offer an opportunity to write new agreements that provide for consequences to kick in automatically if an investigation confirms that there is an IPR infringement, whether those consequences involve domestic redress or taking a case to the WTO.
- Put IPR reform on the agenda for the WTO. The WTO's agreement on the trade-related aspects of intellectual-property rights, or the TRIPS agreement, establishes minimum levels of intellectual-property protections that WTO members have to give one another. But these minimum standards provide inadequate protection, especially in today's world where rapid technological advances and global value chains are making it easier to violate intellectual-property rights. Current language has failed hugely in this area, and greater protections are needed.

Policies that show global leadership to make more jobs 'just jobs'

In order to rebalance the long-running U.S. trade deficit, the U.S. economy will need to start exporting more, and the government can play a key role in achieving this goal. Ninety-five percent of the world's consumers, accounting for 75 percent of the world's purchasing power, reside outside the United States and are potential customers for the

goods and services produced by American workers and businesses.¹⁹

Rising living standards through the creation of “just jobs”—jobs that provide appropriate remuneration, labor rights, and opportunities for upward economic mobility—help create new markets for U.S. products, thus improving opportunities to export and creating jobs at home.²⁰ Just jobs also help create a fairer, competitive global economic playing field so that countries cannot leverage poor labor standards for economic gain.

The United States can play an important role in creating this virtuous circle of broad-based economic growth by making just jobs a priority in its foreign assistance, trade, and investment policies. Specifically, we recommend:

- Promoting greater coordination across U.S. government international agencies and consistency in their policies to ensure maximum impact in promoting just jobs internationally, especially in technical assistance to help other countries spur job growth
- Requiring integration of just jobs into the overall development objectives of the U.S. Agency for International Development
- Promoting strong labor provisions in all trade and investment agreements, starting with the Trans-Pacific Partnership and the Transatlantic Partnership, and working with international partners to incorporate a discussion of employment/jobs in multi-lateral trade discussions
- Updating the U.S. Foreign Assistance Act of 1961 to ensure that countries receiving foreign direct assistance comply with the same basic labor criteria that we use before granting a nation trade preferences
- Assuming leadership by U.S. representatives in fleshing out a specific plan for just jobs in the G20



Ninety-five percent of the world’s consumers, accounting for 75 percent of the world’s purchasing power, reside outside the United States and are potential customers for the goods and services produced by American workers and businesses.

Policies that promote exports

More exports mean more jobs created and more business investment in the U.S. econ-



In this Jul. 13, 2012, photo, a container ship from China is offloaded at Massport's Conley Terminal in the port of Boston.

AP PHOTO/STEPHAN SAVOIA

omy, which is why President Obama launched the National Export Initiative in 2010 with a goal of doubling exports by the end of 2014.²¹ In fact, the International Trade Administration estimates that every \$1 billion in U.S. exports supports approximately 5,000 new jobs.²² Part of the key to boosting U.S. exports lies in previously outlined policies that build human capital and invest in innovation—ensuring we have high-quality goods and services to export—and another key component is encompassed in policies already outlined in this trade section, which will ensure a fair playing field for competitive U.S. workers and businesses in the global economy. But more can be done to help businesses compete and expand exports to the world market.

Specifically we recommend:

- Ensuring that partnerships between federal, state, and local governments are assisting small and medium-sized businesses in increasing exports so that they are able to tap into growing overseas consumer markets
- Expanding, as necessary, the availability of export financing via the Export-Import Bank, to ensure that U.S. firms are competitive vis a vis firms from other nations with export banks that operate at higher authorization levels as a percentage of their GDP
- Boosting high-tech exports by continuing to streamline the export-licensing process

to further reforms that move appropriate export categories from the stringent and vague U.S. Munitions List to the more specific and easier to navigate Commerce Control List

Policies to increase foreign direct investment

There is a strong relationship between higher levels of foreign direct investment, or FDI, and domestic economic growth.²³ Moreover, the jobs created by foreign companies are a driver of middle-class growth because their average wages are 30 percent higher than average full-time wages in the economy as a whole.²⁴

Although the United States continues to lead the world in total FDI inflows, it has fallen from a peak of 45 percent of global FDI inflows in 1984 to just 15 percent in 2011.²⁵ In recognition of the critical role of FDI in the American economy, in 2011 the President's Council on Jobs and Competitiveness recommended a goal of attracting \$1 trillion in FDI over five years.²⁶

The key to attracting high-value FDI is making the United States a better place to do business through the broad range of proposals in this report that improve areas such as education and infrastructure. So, as with boosting

exports, many of the keys to growing FDI will be found in investments in our broader plan to boost the competitiveness of our workforce and our economic environment.

There are three further steps that we should take, though. We recommend:

- Increasing support for Select USA—the inward investment arm of the Commerce Department—as suggested by the president in his 2014 budget²⁷
- Restoring and expanding the collection of foreign direct investment statistics, which were eliminated from the Bureau of Economic Analysis's portfolio as a result of a reduction in the Department of Commerce's FY 2008 budget, so that these data can be used to analyze where the best opportunities are for expanding FDI²⁸
- Conducting more research at a federal level to clarify when FDI is beneficial and when it is not—keeping in mind that there are instances where investment in the United States may not be motivated by normal commercial objectives but instead by national objectives such as gaining technological leadership and the jobs that go with it.²⁹ ■

Endnotes

- 1 Bureau of the Census, "U.S. International Trade in Goods and Service," available at http://www.bea.gov/newsreleases/international/trade/2013/xls/trad_time_series_1212.xls (last accessed May 2013).
- 2 International Trade Administration, *ITA Strategic Plan: FY 2012-2016* (Department of Commerce, 2012), available at <http://trade.gov/PDFs/strategic-plan.pdf>.
- 3 World Bank, "World Development Indicators & Global Development Finance" (2012), available at http://databank.worldbank.org/ddp/editReport?REQUEST_SOURCE=search&CNO=2&country=&series=NE.EXP.GNFS.ZS&period=.
- 4 Bureau of Economic Analysis, "National Income and Product Accounts Table 1.1.6: Real Gross Domestic Product, Chained Dollars," available at <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1>.
- 5 Ibid.
- 6 World Trade Organization, "Automaticity," available at http://www.wto.org/english/thewto_e/glossary_e/automaticity_e.htm (last accessed May 2013).
- 7 Most trading partners are individual countries, though some are listed as a group such as the European Union. For a copy of the 2012 Trade Barriers Report, see Office of the U.S. Trade Representative, *The 2012 National Trade Estimate Report on Foreign Trade Barriers* (2012), available at http://www.ustr.gov/sites/default/files/NTE%20Final%20Printed_0.pdf.
- 8 Terrence P. Stewart, "China's Continued Use of Export Duties in Violation of Its WTO Commitments—2013 Is Not the Solution Even Though China Is Now in Compliance on Certain Raw Materials" (Washington: Stewart and Stewart, 2013), available at http://www.stewartlaw.com/stewartandstewart/TradeFlows/tabid/127/language/en-US/Default.aspx?udt_583_param_detail=1071.
- 9 U.S. Department of Commerce, comment on "Secretary Bryson Hosts Trade Promotion Coordinating Committee and Export Promotion Cabinet," The Commerce Blog, comment made on February 28, 2012, available at <http://www.commerce.gov/blog/2012/02/28/secretary-bryson-hosts-trade-promotion-coordinating-committee-and-export-promotion-c> (last accessed May 2013).
- 10 Joseph E. Gagnon, "Combating Widespread Currency Manipulation" (Washington: Peterson Institute for International Economics, 2012), available at <http://www.piie.com/publications/pb/pb12-19.pdf>.
- 11 Bureau of Economic Analysis, "International Transactions Accounts data, Table 12," available at <http://www.bea.gov/international/> (last accessed May 2013).
- 12 The trigger builds on a number of principles encapsulated in proposals made by Sens. Chuck Schumer (D-NY) and Sherrod Brown (D-OH) in the Currency Exchange Rate Oversight Reform Act.
- 13 A broad range of approaches are possible for estimating the level of exchange-rate adjustment commensurate with stable international economic balances, producing a similarly broad range of estimates. We believe the approach relying on fundamental macroeconomic balancing provides both the right policy goal—working toward medium-term adjustment—and actually errs to conservative estimates. William Cline and John Williamson, "Estimates of Fundamental Equilibrium Exchange Rates," *PIIE Policy Brief 12-14* (2012), available at <http://www.iie.com/publications/pb/pb12-14.pdf>.
- 14 For details on cases leading up to President Obama's signing of HR 4105 in March 2012, see Vivian C. Jones, "Trade Remedies: A Primer" (Washington: Congressional Research Service, 2006), available at <http://fpc.state.gov/documents/organization/70036.pdf>; HR 4105 is an act that applies the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economies and applies it retroactively to November 2006, when the Department of Commerce started accepting CVD petitions against nonmarket economies. The act also instructs the Department of Commerce to modify antidumping laws to resolve the double-counting problem.
- 15 WTO Appellate Body Report, "United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China" (2011), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm.
- 16 Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (1994).
- 17 Office of the U.S. Trade Representative, *2012 Special 301 Report* (2012), available at http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report_0.pdf.
- 18 A wide range surrounds this estimate, as several of the surveyed firms were unable to calculate the losses they incurred. The analysis also relies on businesses' self-reported losses, and so should be taken with a grain of salt. Secretary of the Commission, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy* (U.S. International Trade Commission, 2011).
- 19 Office of the U.S. Trade Representative, "Economy & Trade," available at <http://www.ustr.gov/trade-topics/economy-trade> (last accessed May 2011); Jobs Council, *Road Map to Renewal* (The White House, 2011), available at http://files.jobs-council.com/files/2012/01/JobCouncil_2011YearEndReport1.pdf.
- 20 John Podesta and Sabina Dewan, "Just Jobs" (Washington: Center for American Progress, 2010), available at <http://www.americanprogress.org/issues/labor/report/2010/10/07/8498/just-jobs/>.
- 21 International Trade Administration, "National Export Initiative Fact Sheet," available at <http://trade.gov/nei/nei-fact-sheet.asp> (last accessed May 2013).

- 22 International Trade Administration, "Fact Sheet: Build it Here, Sell it Everywhere: Why Exports Matter," available at <http://www.commerce.gov/news/fact-sheets/2012/05/17/fact-sheet-build-it-here-sell-it-everywhere-why-exports-matter> (last accessed May 2013).
- 23 Lucyna Korneck and Vladislav Borodulin, "Foreign Direct Investment Stock Contributes to Economic Growth in the U.S. Economy" (Daytona Beach, Florida: Embry-Riddle Aeronautical University College of Business, 2006), available at <http://www.eefs.eu/conf/athens/Papers/563.pdf>; Mehdi Salehizadeh, "Foreign Direct Investment Inflows and the U.S. Economy: An Empirical Analysis," *Economic Issues* 10 (2) (2005): 29–50, available at <http://www.economicissues.org.uk/Files/205Salehizadeh.pdf>.
- 24 Economics and Statistics Administration, *Foreign Direct Investment in the United States* (Department of Commerce, 2011), available at <http://www.esa.doc.gov/sites/default/files/reports/documents/fdiesaisssuebriefno2061411final.pdf>.
- 25 United Nations Conference on Trade and Development, "Inward and outward foreign direct investment flows, annual, 1970–2011" (2012), available at <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=88>.
- 26 Jobs Council, "Taking Action, Building Confidence: Five Common-Sense Initiatives to Boost Jobs and Competitiveness" (2011), available at <http://www.jobs-council.com/2011/10/10/jobs-council-releases-taking-action-building-confidence-interim-report-to-the-president/>.
- 27 Undersecretary of Commerce for International Trade Francisco Sanchez, "Foreign Direct Investment and SelectUSA," Testimony before the House Energy and Subcommittee on Commerce, Manufacturing, and Trade, April 18, 2013.
- 28 Andrew Reamer, "Economic Intelligence: Enhancing the Federal Statistical System to Support U.S. Competitiveness" (Washington: Center for American Progress, 2012).
- 29 Examples of factors that may be involved and should be considered when it comes to foreign acquisitions are discussed in James K. Jackson, "The Exon-Florio National Security Test for Foreign Investment" (Washington: Congressional Research Service, 2013).