Washington Decoded

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# Bashing, Bullying, Blaming Japan, US Deals with a Deficit

*By Max Holland*

Journalistic predictions are risky. But here's a sure thing. On or before May 30, the Bush administration will significantly heighten trade tensions with Japan and a congressionally-mandated report will be the catalyst.

By that date, US Trade Representative Carla A. Hills must identify and initiate action against America's "unfair" trading partners who run up chronic trade surpluses. And Japan, exporting nearly three times what it buys from America, will be presumed the unfairest trader of all.

Before leaving the Treasury Department for the State Department, James A. Baker debased the "strong" Reagan dollar and improved the US balance of trade in the process. But the export surge has stalled, at a time when America is still sucking in more than $10 billion worth of imports in excess of exports every month. And since Japan accounts for 45% of this imbalance, it will draw a corresponding amount, or more, of America's ire. Tokyo's large contribution to the stubborn US deficit is accepted as prima facie proof of unfairness; the surplus exists, in other words, because Japan keeps its own markets closed.

Several senators, including Democrat Lloyd Bentsen of Texas, plus the AFL-CIO, certain high-tech industries like semiconductors, low-tech industries like soda ash producers and the Commerce Department, among others, are all dead set on seeing Japan make the May 30 list of unfair traders.

Some cautious voices inside the administration, primarily at the State Department, warn against stigmatizing Japan just yet, especially during a period of uncertainty for the ruling Liberal Democratic Party. They think it wiser to brand more tractable countries, like Korea or Brazil, before taking on America's creditor. But should that happen, Japan will be put on ostentatious notice that it's next. So the prediction still holds.

The May report is merely one in a series mandated by the complex "Super 301" clause of the 1988 Omnibus Trade and Competitiveness Act. In earlier incarnations, Section 301 was an entirely understandable, indeed invaluable, part of US trade law. It authorized the president to impose trade sanctions against any country engaged in an unjustifiable policy that "burdens or restricts United States commerce." The president could choose from a wide variety of sanctions, everything from an outright embargo to tariffs or quotas on foreign goods. Section 301, in other words, was a necessary legal resource to hit other countries when they failed to live up to their negotiated trade obligations.

Super 301 is quite another matter. In scope it is almost breathtaking, for it allows the United States to penalize Japan, say, for its convoluted distribution and marketing system. The practice does not have to be illegal under current international trade law. It simply has to be deemed "unreasonable" in America's unilateral judgment. After the May report is issued, the Bush Administration has 18 months to get a barrier dismantled. If negotiations fail, then the president will be empowered (also pressured) to impose sweeping sanctions against the foreign malefactor.

For a true sense of just how misguided Super 301 is, consider the clause's legislative history. Only then does it become apparent that Super 301 is perhaps the worst piece of trade legislation since the Smoot-Hawley Tariff Act of 1930.

The story begins in May, 1982, when Houdaille Industries, a Florida-based conglomerate, petitioned the Reagan Administration for protection against Japanese machine-tool imports.

Houdaille has been one of the top 12 US machine tool builders since the mid-1960s but was suffering an unprecedented loss of market share to the Japanese. None of this was due to its own ineptitude, the conglomerate claimed. Rather, in a 714-page petition, Houdaille charged that Japan had instigated and subsidized a machine-tool cartel bent on carving up the United States and decimating US builders.

Houdaille's argument was an admixture of fact and fancy that did not support its thesis. Government subsidies and Ministry of International Trade exhortations were not the main reasons behind Japan's successful penetration of the US market. Success derived from a Japanese willingness to invest heavily in plant and equipment, to market their products aggressively throughout the world, to work doggedly toward long-term goals and pay unusual attention to worker training and motivation. This description is derived almost verbatim from the finding of a study mission sent to Japan by the National Machine Tool Builders' Association, the US industry's major trade association.

By contrast, Houdaille, and many other American builders, failed to invest (somewhat understandably so) during the uncertain economic climate of the 1970s. In addition, Houdaille labor-management relations were poor, and like many other conglomerates it was addicted to managing by the numbers rather than by the product.

Houdaille, moreover, was the first large industrial corporation to undergo a leveraged buyout, in 1979 (a buyout engineered by Kohlberg, Kravis, Roberts & Co., the same firm that recently leveraged RJR Nabisco for $25 billion). Houdaille's nearly $400-million LBO played no small part in the decision to manufacture a Washington solution to its debt crunch, blaming the Japanese.

It's always easier to prey on American conspiratorial suspicions about Japanese trade and industrial practices than to engage in self-criticism. And so for 13 months, despite its shortcomings, the novel Houdaille petition was the focal point for a titanic, bitter struggle between protectionists (called "Japan-bashers") and free-traders (called "white hats")

inside the Reagan Administration. The petition was treated as a claim under Section 301 of the 1974 trade law, and it seized the imagination of both Congress and the press.

When Ronald Reagan turned down Houdaille in April, 1983, the conglomerate's legion of sympathizers in Congress believed the company got a raw deal. So the lawmakers subsequently sought to reward Houdaille for its extraordinary, Don Quixote-like struggle. They decided the real culprit (aside from the Japanese) was the inadequate, pusillanimous US trade law – in particular, the fact that the White House was not enforcing Section 301 when American manufacturers were victimized by so-called predatory foreign export targeting.

First in 1984 and then again in 1988, Congress extensively rewrote Section 301. Members were goaded by other beleaguered industries, most notably semiconductor manufacturers and organized labor. The final result was a score of far-reaching changes in Section 301, and its super transformation.

Bad facts, as usual, made for bad law. Section 301 went from a necessary weapon to a blunt, bullying instrument. Congress' attitude was if the president wasn't vigorous in enforcing fair trade, it would force him, via Super 301, to perform that duty. And Congress attempted to accomplish this the only way – aside from purse strings – Congress knows how: by imposing a nightmarish array of reporting requirements, confrontational deadlines, mandatory actions, and other micro-management practices.

With the worst still to come, Super 301 has already caused a big headache at the agency charged with carrying out most of its provisions. The Office of the US Trade Representative, one of the smallest autonomous units in federal government, has long enjoyed a reputation as a can-do bureaucracy and impartial judge of competing interests. Now it drowns in a sea of reporting requirements and often impossible demands, such as the mandate to quantify the cost of trade barriers to US exports.

Basic economic theory says that the value of trade barriers can never be measured accurately. The agency already shows signs of becoming paralyzed and demoralized by a paper monster while its important work goes undone.

To make matters worse, these same reporting requirements are often self-righteous in the extreme and violate long-standing trade goals. Take the report due May 30, identifying countries with unfair trade practices. That's like identifying a drinker at an Alcoholics Anonymous meeting. Every country engages in discriminatory practices. But the proper forum for settling disputes over trade practices, as the United States has heretofore argued, is the General Agreement on Tariffs and Trade (GATT).

Instead, Super 301 dispenses with the multilateral approach and exchanges it for crude, bilateral bullying as the US government unilaterally declares certain practices unfair. They may well be, but several US trade practices could also be tagged unfair by another country with a Super 301 on its books. Trade experts are calling this approach

"procedural protectionism" because eventually it will provide an excuse for erecting new US barriers on the grounds that other countries don't live up to pure free trade standards.

Ultimately, however, the worst aspect of Super 301 is focus; it will divert attention from the profound domestic sources of America's manufacturing crisis. Put aside for a moment any notions of how open or closed the Japanese market is. When American manufacturers cannot compete or don't exist at home, the root problem is not foreign but domestic. Solving this problem will be a formidable challenge, requiring nothing less than an American brand of *perestroika* in both foreign and domestic policy. In the meantime, unbecoming and shrill exercises mandated by Super 301 postpone the day of reckoning, assuring that the cure will be all the harder for having been postponed.

But then it is always easier to find a scapegoat.

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