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Help for a Struggling United States Economy: Capital Gains Cuts or Trade Barriers

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COMMENT: HELP FOR A STRUGGLING UNITED STATES ECONOMY: CAPITAL GAINS CUTS OR TRADE BARRIERS

I. INTRODUCTION

The 1986 Tax Reform Act (1986 Act) caused many United States investors to collapse or endure huge losses.[1] Prior to the 1986 Act, investors based financial decisions on the favorable tax treatment given to investment property, particularly capital gains[2] and passive activities.[3] The shift away from beneficial treatment of capital gains and passive activities,[4] while not the sole cause, certainly contributed to the Savings and Loan debacle,[5] the slow but steady decline of the

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1. Lawrence Zelenak, *When Good Preferences Go Bad: A Critical Analysis of the Anti-Tax Shelter Provisions of the Tax Reform Act of 1986*, 67 TEX. L. REV. 499 (1989).

2. I.R.C. § 1202 (repealed 1986).

3. I.R.C. § 469 (1991). This section, as amended by the 1986 Act, severely limits the ability of taxpayers to utilize various tax-shelters which existed prior to the 1986 Act.

4. I.R.C. § 1202 (repealed 1986); I.R.C. § 469 (1991). Section 1202 had allowed deductions for capital gains. Section 469, as amended by the 1986 Act, disallowed passive activity losses.

5. Numerous savings & loan's built their portfolios around real estate. The 1986 Act removed most of the tax benefits which came with owning real estate. Therefore, real estate, which had been appraised prior to the 1986 Act, dropped dramatically in price. The result was a portfolio of investments which had decreased significantly in value. Lawrence J. White, *Financial Institutions and Regulations, The S & L Crisis: Death and Transfiguration — The S & L Debacle*, 59 FORDHAM L. REV. 57 (1991).

economy[6] and the continuation of Japanese investment in the United States.[7]

The Japanese, on the other hand, have continued their favorable treatment of capital gains in their Tax Code.[8] Whereas Japanese investors do fall under the United States Tax Code on income arising from activities in the United States,[9] they continue to receive favorable treatment on investments in Japan.[10] This favorable treatment insures the availability of investment capital. It would appear United States investors, like their Japanese counterparts, also could acquire capital on ventures in Japan. This is not the case, however, because of the barriers to foreign investment in Japan.[11] These barriers, combined with the favorable treatment of capital gains in Japan, create an imbalance between Japanese investment in the United States and United States investment in Japan.

The United States must decide what general policy to follow when correcting this imbalance. It may cultivate protectionism or open markets and free trade.[12] This comment addresses why the United States should reestablish favorable treatment for investment property in the United States, specifically capital gains, and maintain a policy of open markets and free trade rather than establish barriers to foreign investment.

II. HISTORY

A. *Capital Gains in the United States and Japan*

Historically, both the Japanese and United States Tax Codes favored creating investment capital, specifically, by preferential treatment of capital gains.[13] Japan sought to stimulate an economy depleted

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6. Zelenak, *supra* note 1, at 507.

7. *See* H.R. REP. NO. 855, 101st Cong., 2d Sess. (Oct. 12, 1990). Foreign investment in the United States increased from $55 billion at the end of 1979 to $401 billion at the end of 1989. *Id.*

8. COOPERS & LYBRAND, 1992 INTERNATIONAL TAX SUMMARIES J-12, J-15, J-16, J-20.

9. John S. Nolan, *United States Taxation of Foreign Investment in the United States*, 8 AM. J. TAX POL'Y 291, 293 (1990).

10. COOPERS & LYBRAND, *supra* note 8.

11. Toshinobu Inada, *Investment Opportunities and Barriers in Japan: The Regulation of Direct Investment*, 14 HASTINGS INT'L & COMP. L. REV. 463, 465 (1991).

12. The choice between protectionism and open markets is only a choice with regard to a general policy. When specific details of any particular treaty are negotiated, leeway should be allowed based on the needs of the participating nations.

13. *See* Lee A. Sheppard, *What We Can Learn From the Japanese*, 35 TAX NOTES (TAX ANALYSTS) 224 (1987).

of investment capital after World War II.[14] The United States has provided numerous justifications for the favorable treatment of capital gains, including the argument that a portion of the gains are the result of inflation and, therefore, full taxation would be unfair.[15] In addition to favorable treatment of capital gains, both countries have enacted provisions for preferential tax treatment of income that is reinvested within a prescribed period.[16]

The major difference between the two countries' tax codes has been the stability of the Japanese Tax Code[17] versus the constant change of the United States Tax Code.[18] For example, the depreciation systems and corporate tax rates in Japan have been relatively stable for years.[19] Also, capital gains on securities in Japan remained almost completely tax exempt prior to 1988.[20] This stability caused Japanese investors, confident there would not be unanticipated tax burdens, to realize enormous profits on investments.[21] The result has been an economy with a staggering growth rate over the past forty years.[22] In contrast, the United States investor has had to anticipate the constant changes in the United States Tax Code, including the 1986 Act, which eliminated almost all preferential treatment of capital gains.[23] This lack of stability has adversely affected the United States economy.[24]

B. *International Tax Policies*

The United States has led the industrialized world by supporting policies that create open markets and encourage free trade.[25] These

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14. *See id.* The Japanese code was actually designed by Americans after World War II. *Id.*

15. JAMES J. FREELAND ET AL., FUNDAMENTALS OF FEDERAL INCOME TAXATION 647 (1987).

16. I.R.C. §§ 1031, 1034; COOPERS & LYBRAND, *supra* note 8, at J-16.

17. Sheppard, *supra* note 13, at 224-25.

18. *Id.* at 225; FREELAND ET AL., *supra* note 15, at 648-49; Revenue Act of 1934, Pub. L. No. 73-216, § 117(a), 48 Stat. 680, 714; Revenue Act of 1942, Pub. L. No. 77-753, § 150(a), 56 Stat. 798, 843; Tax Reform Act of 1976, § 1402, Pub. L. No. 94-455, 90 Stat. 1520, 1731-33; Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 1001(a), 98 Stat. 494, 1011-12; I.R.C. § 1202.

19. Sheppard, *supra* note 13.

20. YUJI GOMI, GUIDE TO JAPANESE TAXES 1989-90.

21. *See id.* ¶1-200.

22. Alan S. Gutterman, *Japan and Korea: Contrasts and Comparisons in Regulatory Policies of Cooperative Growth Economies*, 8 INT'L TAX & BUS. L. 267 (1991).

23. *General Explanation of the Tax Reform Act of 1986*, 74 Stand. Fed. Tax Rep. (CCH) 7 (May 8, 1987) [hereinafter *General Explanation of TRA* 1986].

24. Zelank, *supra* note 1, at 507; White, *supra* note 5.

25. Nolan, *supra* note 9, at 295.

policies have been implemented primarily through tax treaties that favor neither the domestic nor foreign investor.[26] The United States encouraged these policies when it was the world's economic leader and believed the source country should only tax foreign investors on income earned in the source country.[27] These policies focused on avoiding discrimination and double taxation.[28] Although some measures have acted to discriminate in favor of United States investors, the basic policies have remained intact.[29]

The Japanese adopted a much different approach. Relying on a rationale similar to the one behind preferential treatment for capital gains, the Japanese passed protectionist measures immediately after World War II to help rebuild their economy.[30] These measures, coupled with informal barriers, have dissuaded foreign investment in Japan.[31] Japanese investors took advantage of this protection, and turned their country into an economic power with an economic growth rate that was approximately twice that of the United States during the 1980's.[32]

III. PRESENT INVESTMENT POLICIES

A. *Favorable Treatment for Investors in Japan*

In 1988, the Japanese Tax Code underwent a series of revisions (1988 revisions) because, like the United States Tax Code prior to 1986,[33] many people considered the provisions which so heavily favored investment unfair.[34] Unlike the 1986 Act, the 1988 revisions still pro-

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26. *Id.* at 293, 294.

27. *See id.* at 293.

28. *Id.* at 294; STAFF OF JOINT COMMITTEE ON TAXATION, 101ST CONG., 2D SESS., BACKGROUND AND ISSUES RELATING TO THE TAXATION OF FOREIGN INCOME IN THE UNITED STATES 66 (Comm. Print, 1990).

29. *See* S. REP. NO.445, 100th Cong., 2d Sess. (1988); John Turro, *U.S. Treaty Overrides Criticized by IFA Members*, 45 TAX NOTES (TAX ANALYSTS) 22 (1989); John A. Corry & William L. Burke, *Legislative Overrides of Tax Treaties*, 37 TAX NOTES (TAX ANALYSTS) 931 (1987); Mike McIntyre, *More in Defense of Treaty Overrides*, 2 TAX NOTES INT'L (TAX ANALYSTS) 35 (1990).

30. Inada, *supra* note 11, at 464.

31. *Id.* at 465-72.

32. Robert Ortner, *All the Wrong Moves on the Deficit*, N.Y. TIMES, Nov. 18, 1990, § 3, at 13, col. 1. The Japanese spent 1/4 of their national income on capital investments and research and development during this period. *Id.* The United States only spent 1/8 of its national income on these investments. *Id.*

33. *General Explanation of TRA* 1986, *supra* note 23.

34. WORLD TAX REFORM: A PROGRESS REPORT 1, 4-5 (Joseph Pachman ed. 1988).

vided preferential treatment for capital gains.[35] For example, capital gains on securities, for the most part untaxed prior to the 1988 revisions,[36] are now taxed at a 20% rate.[37] When compared with top income brackets of 50%,[38] this 20% rate is very favorable treatment.[39] Additionally, there are non-recognition provisions which allow the Japanese investor to roll-over any gains on the sale of land or buildings used for business purposes if the proceeds are used to acquire new land or buildings for investment.[40] These provisions, coupled with beneficial treatment of capital gains, insure a favorable environment for capital investment.

B. *No Favorable Treatment for Investors in the United States*

The United States, on the other hand, has almost completely abandoned any preferential treatment of capital gains.[41] Whereas the United States Tax Code does contain some non-recognition provisions for residential property and like-kind exchanges,[42] capital gains are taxed at the same rate as ordinary income[43] or for top bracket taxpayers at a rate 3% less.[44] This 3% differential is far less than the

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35. COOPERS & LYBRAND, *supra* note 8.

36. GOMI, *supra* note 20.

37. COOPERS & LYBRAND, *supra* note 8, at J-15. This tax rate is at the taxpayers option. He may elect a different taxation method; however, the 20% rate is generally the most beneficial. *Id.*

38. *Id.* at J-14. The current brackets and rates are:

TABLE

0-3,000,000	(approximately $21,000) - 10%
3,000,000-6,000,000 yen	($21,000-43,000) - 20%
6,000,000-10,000,000 yen	($43,000-71,000) - 30%
10,000,000-20,000,000 yen	($71,000-143,000) - 40%
over 20,000,000 yen	($143,000) - 50%

In addition to these national taxes there is a local tax which is:

0-1,600,000 yen	($11,000) - 5%
1,600,000-5,500,000 yen	($11,000-39,000) - 10%
over 6,600,000 yen	($39,000) - 15%

39. *See id.* at J-15, J-16 (providing an explanation of other favorable treatment given to capital gains).

40. GOMI, *supra* note 20.

41. *General Explanation of TRA* 1986, *supra* note 23, at 179.

42. I.R.C. §§ 1031, 1034 (1991).

43. *General Explanation of TRA* 1986, *supra* note 23, at 179.

44. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11,101(c), 104 Stat. 1388. A rate of 28% was established as the maximum for capital gains. *Id.* This 28% rate is 3%

30% differential for top-bracket taxpayers in Japan.[45] Similarly, the like-kind provisions in the United States Tax Code are far more limited than the non-recognition provisions in the Japanese Tax Code.[46]

C. *Trend Toward Investment Barriers in the United States*

In what appears to be a steady departure from past policies, the United States is beginning to take steps to inhibit foreign investment.[47] In 1989, the United States adopted earnings stripping provisions which adversely affect foreign investment.[48] It also appears President Clinton favors placing a heavier tax burden on foreign investment in the United States.[49] There have been strong objections from foreign countries to any provisions which override present tax treaties.[50] Attitudes against foreign products and investment, including Japan-bashing, are also becoming more prevalent.[51]

IV. A PROPOSED ALTERNATIVE

A. *Aiding the United States Investor*

Public sentiment appears to demand action directly against Japan.[52] This action could be accomplished by creating barriers against Japanese imports and investments.[53] This action would actually worsen the United States economy in the long run,[54] elicit retaliatory meas-

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lower than the top rate for ordinary income of 31% which is the rate for the majority of taxpayers who own capital assets. *See* David E. Rosenbaum, N.Y. TIMES, Jan. 8, 1990, at A1.

45. The top rate of 50% less the rate on capital gains of 20% equals a 30% reduction of the tax burden on taxpayers in the top bracket. The taxpayers in this bracket own the majority of capital assets; therefore, this is the relevant comparison. COOPERS & LYBRAND, *supra* note 8. Top bracket taxpayers in the United States had the same 30% differential prior to the 1986 Act. Rosenbaum, *supra* note 44.

46. I.R.C. § 1031; COOPERS & LYBRAND, *supra* note 8. The Japanese provision is broader because it does not require the reinvestment to be in like-kind property. *Id.*

47. Turro, *supra* note 29; *see* Corry & Burke, *supra* note 29; ROBERT E. BALDWIN, EMPIRICAL STUDIES OF COMMERCIAL POLICY 245 (1991).

48. H.R. REP. NO. 247, 101st Cong., 1st Sess. 1240 (1989).

49. David S. Broder, *Bush Assails Clinton on Trade Policy*, THE WASH. POST, Aug. 28, 1992, at A1.

50. *See* Turro, *supra* note 29.

51. Don Oberdorfer, *U.S.-Japan Relations Seen Suffering Worst Downturn in Decades*, THE WASH. POST, Mar. 1, 1992, at A1.

52. *Id.*

53. *See* RICHARD NIXON, SEIZE THE DAY 265-66 (1992) (explaining how the barriers in the United States to sugar and peanut imports have aided the United States producers while adversely affecting foreign producers).

54. BALDWIN, *supra* note 47, at 273; Nolan, *supra* note 9, at 298. The effect of the 1989

ures[55] and violate existing treaties.[56] Instead, the United States should initiate measures favoring domestic investors. One such measure would be a return to preferential treatment of capital gains.[57] While it is true this policy would favor all investment in the United States,[58] the policy is nevertheless justified because the rationale is to stimulate growth in the United States and allow for the creation of investment capital for United States investors.

Tax breaks for capital gains will increase tax revenue by creating more taxable transactions, stimulate the economy by increasing investment,[59] and allow domestic investors the opportunity to create capital for investments at home and abroad.[60] The present 3% differential provided for taxpayers in the 31% bracket, while having some affect, does not provide enough incentive for investment. The United States, similar to Japan,[61] should adopt a tax policy forcing taxpayers in the top bracket to invest their money or lose it to taxation.

A new tax bracket at approximately 40% for income greater than $100,000 would conduce investment and help revitalize the economy. The $100,000 income level is an appropriate dividing line because over 80% of all capital assets are owned by persons who make over $100,000.[62] The 40% tax bracket would initiate immediate investment by these taxpayers. Additionally, the higher tax bracket, while keeping the capital gains rate at 28%, would blunt the criticism that preferential treatment of capital gains hurts taxpayers with lower incomes.

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earnings-stripping provision, one protectionist measure recently passed, will be to force some United States taxpayers to go to less desirable lending sources at higher rates. The result being less United States tax revenue. Leonard B. Terr, *Policy Perspective*, 1 TAX NOTES INT'L (TAX ANALYSTS) 156 (1989).

55. *See* Terr, *supra* note 54, at 158 (noting many other countries are presently considering anti-earnings stripping legislation in response to the United States earnings stripping provisions).

56. Turro, *supra* note 29.

57. Congress recognized the possible need for a return to preferential treatment of capital gains as the code sections which dealt with capital gains were left in the United States Tax Code. *See* I.R.C. §§ 1221-1223 (1991).

58. Nolan, *supra* note 9.

59. *See* Rosenbaum, *supra* note 44 (reporting Senator Mitchell, a devout opponent of capital gains cuts, acknowledges they can be used to stimulate business investment); David Slawson, *Taxing as Ordinary Income the Appreciation of Publicly Held Stock*, 76 YALE L.J. 623, 639 (1967).

60. *Id.* When Congress created the 1986 Act, they appeared to be juxtaposing the benefits of capital gains against some theoretical idea of what a fair income tax code would look like. At the present time it would seem the main consideration should be stimulating the economy.

61. COOPERS & LYBRAND, *supra* note 8.

62. Rosenbaum, *supra* note 44.

The major complaint against preferential treatment for capital gains has always been that only the rich have capital assets.[63] This complaint was part of the reason for the recent tax reforms in both the United States and Japan. If the rate on capital gains is kept at 28% while the top rate is raised, it is difficult to substantiate this complaint because this change would not adversely affect taxpayers in the lower brackets. This new top rate, without a corresponding reduction in the rate on capital gains, however, would probably be difficult for those affected taxpayers to swallow.

One way to make it more acceptable would be to follow the Japanese example of no tax on reinvested income.[64] The Japanese have a zero tax rate on investment income from the sale of buildings or land which is reinvested,[65] similar to United States treatment of like-kind property.[66] The United States should adopt a similar zero rate for reinvested income, including all capital gains. Any capital gains that are reinvested would go untaxed with a corresponding reduction in the basis of the purchased asset.[67] Upon the taxpayer's death, the estate would be required to pay all of the foregone taxes.[68]

For example, if the taxpayer had a gain of $50,000 on the sale of a capital asset and reinvested $40,000, the tax rate would be 28% on $10,000 and the basis of the purchased property would be reduced by $40,000. The taxes would have to be paid on any inter vivos transfer, including a gift, which did not have a corresponding reinvestment. The taxpayer could not defer taxation indefinitely because, upon his death, all applicable taxes become payable.

Also, it is important for any new tax legislation to have some built-in stability measures. The Japanese Tax Code, while undergoing some changes, has remained consistent in its favorable treatment of capital gains.[69] Such certainty instills consumer confidence and assures investors they will not face unexpected tax consequences. A provision which protects investments made prior to any changes in the Tax Code[70] or one which guarantees favorable treatment of capital gains

63. *Id.*

64. COOPERS & LYBRAND, *supra* note 8.

65. *Id.*

66. I.R.C. § 1031.

67. The reduction in the basis of the reinvested income will insure the income is eventually taxed. The gain will be proportionally greater on any later transaction and taxed at that time unless reinvested.

68. These taxes are presently collected through estate and gift taxes.

69. COOPERS & LYBRAND, *supra* note 8; Sheppard, *supra* note 13, at 225.

70. A "grandfather clause" would prevent the major complaint which followed the passage

with a rolling continuation clause would provide stability.[71] Either provision would appear to limit the government's ability to encourage specific capital investment through manipulation of the Tax Code.[72] The government could still encourage specific capital investment, however, through minor decreases of the 28% rate on whatever capital investment the government wishes to encourage.[73]

The changes in the United States Tax Code would allow United States investors to create capital and thus compete more effectively at home and abroad. The alternative, the creation of investment barriers, could have devastating effects.

B. *Avoiding Investment Barriers*

The Great Depression started as a recession but was escalated, in part, by the passage of the Tariff Act of 1930.[74] A similar reaction to the present recession would be a mistake for several reasons. First, treaty overrides would violate the United States' present commitments.[75] Second, and more importantly, trade barriers would stifle the global economy[76] as the 1986 Act stifled the United States economy.

United States investors counted on the favorable treatment their investments received under the pre-1986 Tax Code in much the same way global investors count on international treaties when making in-

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of the 1986 Act. Many investors complained the 1986 Act made good investments go sour. As previously discussed, this was exactly what happened. *See* Robert B. Robbins, *Distress Situations: Limited Partner Defaults, Resales, Restructurings, Bankruptcy, Recission Offers, Dissolution,* C604 A.L.I.-A.B.A. 405, 409 (1991).

71. The continuation clause would require the government to give a two year warning before making any tax rate changes. Such a provision would enable investors to prepare for changes in the Tax Code. In the past investors have tried to predict what changes would occur. Wholesale changes, as occurred in 1986, often catch investors unprepared and lead to catastrophes for individual investors and the economy. *See* Robbins, *supra* note 69; Patricia A. Brown, *The Resounding Thunder of Rifle Shots: Tax Laws for Individuals,* 22 RUTGERS L. REV. 779, 790-94.

72. *See* Daniel Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation of the 1980s,* 139 U. PA. L. REV. 1, 4-5 (1990).

73. *See id.*

74. *See* Sean D. Murphy, *The ELSI Case: An Investment Dispute at the International Court of Justice,* 16 YALE J. INT'L L. 391, 397 (1991) (explaining in 1934 the United States recognized the need to remove trade barriers to get out of the Depression).

75. Corry & Burke, *supra* note 29.

76. James E. Gjerset, *Crippling United States Airlines: Archaic Interpretations of the Federal Aviation Act's Restriction on Foreign Capital Investment,* 7 AM. U.J. INT'L L. & POL'Y 173 (1991).

vestments.[77] When the 1986 Act was passed, investors who enjoyed profitable investments because of tax advantages now suffered unprofitable investments. Additionally, consumer confidence was destroyed, making it almost impossible to create new capital to salvage these investments. The result was stifled investment and a stagnated economy.

Creating investment barriers, instead of treaties favoring investment, would have the same damaging effect on a global scale.[78] Barriers in the United States would lead to retaliatory measures from other countries and an eventual stagnation of global transactions. Whereas stagnation of the global economy would hurt the United States, it would devastate the developing democracies in Europe.[79] Similarly, the Japanese economy would suffer if the United States began shutting its doors.[80] Such measures are a step away from capitalist principles of open competition and a step toward socialist principles of government subsidization and higher taxes. Recent events have demonstrated socialist economic principles simply do not work.[81] Therefore, any step in that direction would be a step in the wrong direction.

The United States should continue treaty negotiations with Japan in an effort to open Japanese markets.[82] Feeling the effects of the United States recession,[83] the Japanese are becoming aware of the importance of fair trade policies and are making their markets more accessible to foreign investors.[84] At this time, it is imperative for the United States to work with Japan and other nations by continuing a policy of open markets and free trade.[85]

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77. Earnest R. Larkins, *Multinationals and Their Quest for the Good Tax Havens: Taxes are but One, Albeit an Important, Consideration*, 25 INT'L LAW 471, 475 (1991).

78. *See* Murphy, *supra* note 74.

79. *Id.*

80. *Id.; see* Helen Dewer, *Democrats Propose Curb on Japanese Car Imports*, THE WASH. POST, Dec. 21, 1991, at C1.

81. Clayton Jones, *Failures of "Wartime" Socialist Economy Prompt a Re-Thinking in Vietnam*, CHRISTIAN SCI. MONITOR, May 20, 1987, at 10, col. 4.

82. *See* JOINT REPORT OF THE U.S.-JAPAN WORKING GROUP ON THE STRUCTURAL IMPEDIMENTS INITIATIVE (1990). This is one of many recent treaties dealing with international trade.

83. Paul Blustein, *Japan's Fast-Paced Economy Adjusts to Life in Slow Lane*, THE WASH. POST, Nov. 12, 1991, at C1. During the first nine months of 1991 the number of corporate bankruptcies in Japan rose 64%. *Id.*

84. Jonathan Fuerbringer, *World Markets No Longer a Sure Thing*, N.Y. TIMES, Nov. 18, 1990, § 3, at 16, col. 3; Margaret Shapiro, *Japan, U.S. Agree to Make Basic Changes*, THE WASH. POST, June 29, 1990, at A1.

85. Gary R. Saxonhouse, *Japan, SII and the International Harmonization of Domestic Economic Practices*, 12 MICH. J. INT'L L. 450 (1991).

Open markets encourage competition.[86] Protectionism, or a lack of competition, leads to government subsidization[87] which, invariably, leads to higher prices and more taxes.[88] When prices and taxes rise there is less consumer spending power;[89] therefore, to employ the same work force requires more government subsidization, or in the alternative, unemployment. This cycle feeds upon itself and eventually, as recent history has demonstrated, will devour itself. Competition, the foundation of capitalism, may not give the exact results desired, but the alternative, socialism, is a proven failure.[90]

V. CONCLUSION

With increasing public sensitivity to Japanese investment in the United States, it is important for the United States to continue policies which historically have worked rather than those which historically have failed. Favorable treatment of capital gains and protection of investment income turned Japan's devastated post-war economy into a world economic power in a relatively short time.[91] Reestablishing favorable treatment for investment income in the United States would free up investment capital and allow United States investors to revitalize our economy. This tax policy, coupled with provisions which insure some stability in the Tax Code, will help avoid the catastrophes which followed the 1986 Act.

At the same time, it is important to avoid artificial barriers having detrimental effects on both the United States economy and the global economy. Instead, the United States should continue policies of free trade and open markets while negotiating with the Japanese to open their markets. These policies are basic to a capitalist system and, with the recent worldwide failure of socialist economic principles, ones that the United States must not abandon.

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86. BALDWIN, *supra* note 47, at 169, 202.
87. *Id.* at 11.
88. *Id.* at 75, 201-12.
89. *See id.* at 202.
90. Jones, *supra* note 81.
91. Gutterman, *supra* note 22.