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The Trade Reform Act

John H. Jackson*

This morning my ears pricked up when one of the speakers mentioned the pattern of government officials, when there came a time to go to pasture, moving to academia and becoming somewhat more strident in their tone of conversation and terminology. I must tell you that I am an academic who has come to government, just the opposite direction. I did this only recently indeed, I am still on loan from The University of Michigan, and I am still not in the habits and patterns of a government official. I find myself in two frames of mind. The frame of mind of an academic, I think, is to be strident and provocative, to challenge the previous thinking of people, and to be the platonic gadfly to a certain extent. But the academic is somewhat irresponsible, because he does not always need to take a fully balanced approach to a problem. But in a government position one finds himself hemmed in by a variety of forces. Indeed I have heard it said that the definition of a statesman is a politician held upright by equal and opposite forces, and I do not know whether I can play the statesman’s role this afternoon. I will say that I certainly did not come here to defend the current administration, because I am not a member of the party of the current administration, although I am probably not as doctrinaire a member of the opposite party as the previous speaker. Indeed, I might add that there has been a very great effort in putting together the Trade Bill, the legislation which is now before Congress, to solicit advice and opinions from both sides of the aisle and from individuals out of government. There also has been quite a bit of discussion with members of Congress, which is controlled by the opposite party. Some of that discussion surely has paid dividends already, because there have been many remarks by both disinterested and experienced people in Washington noting initial favorable response received by the Trade Bill.

I cannot resist mentioning that the previous speaker failed to note that the Long Term Cotton Textile Arrangement was initiated in the Kennedy days and was carried on through the Democratic

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administration into the current administration. The problems that are faced by government and by citizens are not unique to either party. They are very real problems, and I like the expression of view or the expression of historical perspective that at least one of the speakers used this morning, namely that August 15, 1971, is a watershed. That date marked a turn of events, a turn of responses to the trend of international economic events, and really represents something of a break from the past. I will give you today, if I can, some perspectives of what I see, as a former attorney, scholar, professor, and now as a government official. I add that upon entering government work I have put all my shares of my employer's institution into a blind trust and presumably have no conflict of interest with The University of Michigan in my present position. I have been asked to address myself to the Trade Bill as one who has come from a week of presentations before Congress concerning the bill, a very intense week with many late evenings that I am sure you can imagine. I was informed that I need not discuss the Canadian-American ramifications of the bill. I was simply told that people would be interested in the Trade Bill and to tell them about it. That takes about an hour or an hour and a half, and I want to keep this fairly short so there will be at least some time for discussion this afternoon. I also think there are some things that can be said about the Trade Bill as it affects the problem of American-Canadian relations, and I am going to attempt to draw that connection, but first let me turn to the Trade Bill itself.

I do not want to discuss the details of the Trade Bill at this time. The bill is the most complicated piece of trade legislation that has ever gone before the Congress. It is also a piece of legislation which, I am told by very high administration officials, received more inter-agency study and more extensive discussion and consultation than any other piece of legislation of the past five years. I participated in the last few months of this work. I came in January, after many years of discussion on some of the portions of the bill, and I was responsible, as the chief draftsman of a team of lawyers, for putting it together as quickly as possible (we were behind schedule). In my view the bill represents a responsible response to problems that are very real in the world. I think that it is a liberal response in the sense that it is an attempt to reduce barriers and to open up the economy and the flow of trade among nations to the market forces. You all know that Secretary Schultz has been in

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2 The Trade Reform Act, H.R. 6767, 93d Cong. 1st Sess. (1973).
charge of this operation and was at least the penultimate court of appeal on all the very important issues (some of the issues did of course go to the President himself, but even then Secretary Schultz had a very great influence). As you know, Secretary Schultz is from the University of Chicago's graduate school of business. He is part of the economic philosophy that has been identified with that school, an economic philosophy which embraces free market forces and minimal government interference. This bill bears the stamp of that philosophy and in that sense does not differ in its essential thrust from many other previous pieces of economic legislation. Nevertheless, it is true that there are problems that demand response and observation, and even if one hopes that the problems will diminish, there must be legislation available to tangle with them if they become worse or fail to diminish quickly.

I will address myself to the two basic thrusts of the bill in terms of existing problems. Indeed, if the bill is examined as a whole there are six major titles with three major goals. The first two titles of the bill are addressed to the idea of more open trade, responding in a responsible way to the pressures for relief from the adjustment problems that occur. Nevertheless, the thrust is towards opening up more trade. I will say that I think that the authority the bill requests, to negotiate in a context in which the President has the authority to agree to zero tariffs (even though he may not be able to use that authority because his negotiating partners may not want to go that far) does have a pretty good chance of being approved by Congress.

The next two titles concern a problem which I feel is very real, namely, reforming the economic system by looking closely and carefully at the institutions of the international economic system, the GATT in particular, and other institutions (IMF, for example). One of the two remaining titles deals with extending Most Favored Nation [MFN] status to communist countries and the other with extending the generalized system of preferences to LDC's [Lesser Developed Countries]. I view these last two titles as extending

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3 Id. Title I. Authority for New Negotiations.  
Title II. Relief from Disruption Caused by Fair Competition.  
Title III. Relief from Unfair Trade Practices.  
Title IV. International Trade Policy Management.  
Title V. Trade Relations with Countries Not Enjoying Most-Favored-Nation Treatment.  
Title VI. Generalized System of Preferences.  
Title VII. General Provisions.
the economic system to parts of the world that have not heretofore been full participants. To say anything more about these titles would deviate from our present purpose.

The problem of liberalizing trade has produced a great deal of rhetoric, and some of that rhetoric, I must say, has been unfortunate. Some speeches have not been carefully planned, and some speakers have been misinterpreted. I do not think that the purposes of the bill and trade negotiation are to turn the balance of trade in favor of the United States. Indeed, there have been many discussions over the last few weeks of how the trade bill would be presented to the United States Congress (i.e., through inter-agency discussions and preparation of papers). It was decided not to make that argument to Congress in support of the bill because it is the feeling of economists whom I know both in and out of government that macro-adjustment, which the balance of trade is, should be handled primarily by the exchange rate and monetary system. There are negotiations now in session which should lead to reform of the monetary rate system, changing it from a rigid system of par values and exchange rates to a system that has more opportunity to utilize the adjustment processes built into it. The trade bill and trade negotiations relate to the monetary system in several ways, but I will not discuss them in detail, mentioning only that there is strong opinion that if a certain segment of trade is isolated from the competition of the world market, then it is harder for flexibility in the exchange rate system to bring about adjustment. This is so because the distortions in the trade system place an undue burden of the adjustment process on other areas of trade and investment. That is the argument, I think it is a sincere one, and I think that some will say that if we did nothing, that if we had no trade bill and no multilateral trade negotiations, that the changes in the exchange rates and the processes of reform that are going on would ameliorate the balance of payments problem of the United States, not in the next few months but by the end of this year. We should see some evidence that it will be ameliorating. Hopefully, that will continue, but if it does not, the exchange rate system and the monetary system should be further changed as a way to bring about these macro-adjustments. Macro-adjustments are not really dealt with in a trade bill.

The bill tries to remove distortions. Of all the speeches which you have heard or seen and all the little snippets in the press which isolate statements in ways that are sometimes misleading, I
would prefer to direct you to the President’s message under which the trade bill was sent to the Congress.\footnote{Hearings on H.R. 6767 Before the House Committee on Ways and Means, 93d Cong., 1st Sess., pt. 1, at 101 (1973).} It was that message which was most carefully formulated and is the basis for the policy that is the thinking behind the trade bill. There is another goal therein expressed for this trade bill and another aspect to it that is very important, but subtle and difficult to explain and thus not easily sold to a citizenry. That is probably why some of the rhetoric sounds so strident. I think there is a great deal of concern that the international economic system, both on the monetary side and on the trade side, does not reflect the current problems and difficulties of world trade.

As some of you know, I have spent a lot of time as a scholar looking at the GATT as an institution. I have felt this for some years and was indeed rather gratified to see that there were some others who independently arrived at that conclusion. The problem is of two dimensions. First, there is a problem of the substantive rules of GATT, which are simply out of date in many ways. They have performed very well over a period of several decades and have caused an unprecedented increase in world trade. I certainly do not want to get rid of the GATT, I do not want to chop it up and throw it away or the like. But the GATT, which was constitutionally defective from the start because of some historical problems back in the 1940’s, should be subjected to a complete re-examination. For instance, Article XII of GATT suggests and allows the use of quotas, but not surcharges, in adverse balance of payments situations. Yet all economists say that, at least as between these two approaches, a surcharge is preferable.\footnote{K. DAM, THE GATT 32 (1970).} The GATT is totally deficient on the problem of subsidies, an area in which problems arise every day. Some of them are the source of considerable tension between nations, such as the countervailing duty \textit{Michelin Tires} case.\footnote{X-Radial Steel Belted Tires from Canada, T.D. 73-10, 38 Fed. Reg. 1018 (1973).} The United States is prepared to examine these problems in an international multi-lateral forum to see if rules which make sense and can guide the performance of nations and international institutions can be formulated.

There are many areas in which the GATT is simply silent. Since the time when GATT was adopted new devices for protectionism...
have developed which are very hard to police through the GATT.\textsuperscript{7} The GATT understandably omits reference to them, and, unfortunately, it has not been possible to include them because the GATT is so difficult to change. This illustrates another side of the problem of reform, the institutional role of the international economic system. The GATT is an inappropriate mechanism for the settlement of disputes.\textsuperscript{8} This morning someone mentioned some of the various complaints that Canada has against the United States, and I recognize and know that those complaints exist; they are a source of exacerbation. I have talked quietly with a Canadian diplomat who mentioned that Canada has never utilized Article XXIII of GATT as a mode of effectuating some definitive solution of some of these disputes. There are a variety of reasons for that, I suppose, but there is a need for some institutional way to solve some of these disputes and to prevent them from lingering and festering over a period of time. The GATT system just does not cope with that process very well.

I do want to mention agriculture and the trade bill. A very conscious and interesting decision was made before I arrived, namely, that the trade bill would not be formulated in a way to distinguish agriculture from other sectors of the economy. There are no particular provisions in the trade bill that say "agriculture you do this; industrial sector, you do something else." This is not the approach, incidentally, of the Trade Expansion Act of 1962.\textsuperscript{9} This decision makes agriculture a part of the overall broad approach to economic problems in the trade area and makes all the provisions under the Trade Reform Act available in the agricultural sector as well as in other sectors.\textsuperscript{10} United States policy makers have made this very clear. The United States has said that its agricultural restrictions are on the table for negotiation and that is part of the process now. I was very interested this morning when several speakers said they hoped that the trade negotiations would not be hostage to the agricultural sector, and I suppose that we all hope that the trade negotiations would not be hostage to any particular interest. But it is interesting that this was expressed, particularly in light of


\textsuperscript{8}For a discussion of this problem, see K. DAM, \textit{The GATT} 351 (1970).

\textsuperscript{9}H.R. 9900, 87th Cong., 2d Sess. (1962).

\textsuperscript{10}Hearings on H.R. 6767 Before the House Committee on Ways and Means, 93d Cong., 1st Sess., pt. 2, at 557 (1973).
the fact that yesterday afternoon some Congressmen urged Secretary Butz in hearings not to overly stress agriculture in the negotiations because there are also important things to be accomplished in the industrial sector.\footnote{Id. at 542.} It is interesting how far the cycle has come. Perhaps a decade ago it was thought necessary to handle agriculture separately because it was so sensitive and so politically volatile, like a sacred cow. But now the emphasis on agriculture appears so heavy that Congressmen are warning just the opposite.

Let me turn briefly, if I may, to the problem of Canada. I am not an expert on Canadian-American relations. I know very little about it, and indeed one of the pleasures of being here today is to educate myself. I have learned much and let me give you my reaction as to how the Trade Reform Act could affect Canada. I think that Canada does have some very important coincidences of interest with the United States. The agricultural sector, of course, is one very important area of mutual interest. But I think that Canada, if not a small country, is at least a smaller country than the United States and, following some of the ideas that were expressed this morning, would have a very great interest in the problems of institutional reform. If adequate institutions are lacking, the great powers really can take over and handle things between themselves by negotiation. The weight of that power is felt in a milieu of negotiations that may be drawn out of proportion. But, if an institutional structure provides for fair dispute resolution or fair formulation of new norms and new rules with adequate participation of the various sectors of the various parts of the world, including the smaller countries, then there is a chance for the smaller countries to participate in the process instead of seeing everything negotiated in a backroom among three super powers. I think, and perhaps this is something to which the Canadians here can react, that Canada has a considerable interest in the problem of institutional reform, as smaller nations generally do. A second idea that has occurred to me might be expressed as follows: Canada and the United States share a language and, for the most part, a common cultural heritage. They have economies that have some similarities. They trade with each other. Now if these two countries cannot get along in trade relations, what in heaven's name can be expected in trading relations between countries like the United States and China or the United States and Russia, where none of those conditions are present?
I would view the Canadian-United States relationship as being very important, a possible bellwether of what might be expected in an even more exacerbated form among other nations in the world. I add that there is no illusion entertained by any of the policy makers in Washington that economic issues can be isolated in a way which prevents them from blending with political issues. One of the efforts being made this year by the United States is to prevent that from happening by expressing concern for long-range reform, a reform which is thought of in terms of decades rather than simply the current administration. Incidentally, I think it should be clear that the real effect of the trade bill probably will not be felt until the 1980’s. The pending negotiations are going to take at least three years, if they begin on schedule, and a good deal of the results of those negotiations will have to be phased into effect over a period of at least five years, if not, in some cases, ten or twenty years. We really are talking about something very long-range and, therefore, something that must be above the particular current partisan and political hurly-burly. I mention this in connection with the Canadian relationship also. I tend to agree with John Rehm that, at least in the short run, it does not look like the Auto Pact is going to be the model for future arrangements between the United States and Canada. I am very intrigued by his statement about the ideas of the mid-1960’s that there might be a broader free-trade area between Canada and the United States. This idea is still around, and there are people who still express that thought somewhat wistfully or hopefully. My guess is that there is probably more wistfulness and hopefulness south of the border than north of the border at this time, in light of what we have heard from our luncheon speaker and others today. This is as far as I need go, but I will leave you with one last thought.

As I look at the whole question of international economic order and systems and institutions, I see a very large, but fundamental, problem that is pervasive. This is a problem which I will describe in terminology that I hope will not be misleading, that is, a problem comparable to the problem of national federalism. The problem is keeping decisions that have to do with people and their lives as local and close to them as possible so that they can shape their particular milieu in society, while maintaining an international system that will prevent the decisions of some local areas from harming other local areas. That is a broad, scholarly statement, so general that everybody can run it several different ways, and I
should elaborate. The tax subsidy and incentive area is an example which certainly involves the question of regional development. One must be careful in formulating an international economic system not to lock the whole world into one rigid set of habits, patterns, modes of life, and life styles. That is the danger that I see in purist market-oriented, open, liberal trade without any barriers whatsoever. A system is needed with enough flexibility and enough difference and differentiation among countries that different countries can pursue different goals. One country might pursue a goal of music in its society, subsidize its musicians, and tax industry in order to subsidize the musicians. An international economic system must allow a country to do that without penalizing it to the extent of forcing it to extract itself from the world-wide economic system, which is not easy. It is very difficult and requires much thought. My own feeling, spoken as a legal scholar and not as a government official or lawyer, is that it is of primary importance to establish an institutional framework under which that discourse, that thinking, that studying, that fact-gathering can continue for a long, long time. In other words, I see the process of NTB [non-tariff barrier] negotiations as being perpetual, not something that will be closed about three years from now, an institutional framework through which problems, as they come forward and become clearer, can be handled. That is a very difficult challenge, and it is my hope that we have made a very small start.