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UNITED STATES FOREIGN TRADE: PAST, PRESENT AND FUTURE

STANLEY D. METZGER *

ONE OF THE HOPEFUL aspects of the recent Presidential campaign was the wide measure of agreement in principle among the major candidates on the subject of American foreign trade. Both candidates were for greater trade — not more import restrictions. Those who are addicted to the principles which have underlain the foreign trade policies of the United States since World War II can draw some comfort from this performance. But those who also think that the United States needs to do more to foster foreign trade in the next ten years than it has in the past would be foolhardy to draw too much comfort from the past, including the recent campaign. The forces which underlie protectionism and isolationism have not dissipated; protectionism particularly has gathered strength in recent years; and the difficult period which we are entering will be a serious test.

As always, some appreciation of our past is necessary to see where we are and to place the future in perspective.

The foreign trade of the United States — our exports and imports — is part of our domestic economy and part of our foreign policy. Our foreign trade policy must therefore make sense in terms of the stability and growth of our domestic economy and our standard of living. It must also support and foster our efforts to be secure in a world which must develop in freedom in order to meet the needs and aspirations of its people.

In the 19th Century, when the United States was pursuing a foreign policy of isolationism, when it was seeking to develop a new continent free from economic or political interference from abroad, it was understandable that a policy of self-sufficiency was thought possible and even desirable despite its economic costs. But by the turn of the century, and especially by the time World War I approached, this

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policy of economic autarchy — importing only products we did not produce, and exporting only surpluses — was outdated from every point of view.

Our domestic economy was no longer a group of infant industries which could not stand competition. On the contrary, the Sherman Act,[1] enacted in 1890, had established a general national policy against monopolies and in favor of competition free from artificial restraints such as price-fixing and division of markets. This policy was adopted because, economically, we had decided in favor of an expanding economy producing better goods at lower prices, which meant rising standards of living for our people, and against monopolies and restraints which meant lower living standards. The policy of competition had another domestic purpose, a political purpose in the highest sense of the term. Recognizing that there was a close relationship between economic power and political power, and determined to preserve and improve our democratic political system, the people of the United States set their face against monopoly because a monopoly of economic power could directly and indirectly undermine our democratic system.

Economic isolationism was also outdated in terms of our foreign trade itself. Our agricultural and manufacturing production had grown so great that we needed export markets. Our domestic standards of life had improved to such an extent that we needed more, and a greater variety of, imports. Since we could not export to countries which could not earn enough from our imports to pay for them, and we ourselves needed to export in order to earn enough to pay for our imports, it was in the mutual interest of the United States and its trading partners to accept more imports from one another and to export more of the goods each could produce more economically. The natural outcome of this mutuality of interest was a policy which favored lower tariffs, fewer quotas and other import restrictions, and nondiscrimination in the treatment of imports from the group of countries comprising the world trading system.

This was the logical system, but it was extremely difficult to bring about. It was in 1916 that Congressman Cordell Hull introduced a bill having for its purpose the mutual reduction of excessive tariffs and other import restrictions by the United States and its trading partners, but it was not until 1934 that the Roosevelt Administration succeeded in securing the enactment of the Trade Agreements Act.[2]

1. Sherman Anti-Trust Act, 26 Stat. 209 (1890), 15 U.S.C. §§ 1-7 (1958).
2. Trade Agreements Act §§ 1-4, 48 Stat. 943 (1934), 19 U.S.C. §§ 1351-1354 (1958).

In the meantime, United States tariffs had been pushed to the highest levels in history, in the Fordney-McCumber Act of 1922[3] and the Smoot-Hawley Act of 1930.[4] This Smoot-Hawley Act resulted in protests from 34 countries. "By offending nearly every important country in the world, it played its part in destroying whatever little amity and good will among nations there was left,"[5] according to the historian Carl Becker. A thousand American economists, lead by Paul H. Douglas, now the distinguished Senator from Illinois, had also protested the measure, but President Hoover signed it, even though he could not plead ignorance of the probable consequences.

Nor were the warnings of the economists or the 34 protests from as many countries academic in character. As Cordell Hull stated in his Memoirs, these countries, "Goaded by what they regarded as almost an embargo keeping out their exports to the United States . . . retaliated in kind."[6] In one year, for example, Switzerland's exports to the United States fell off 30.5 per cent as compared to a general decline of her exports of 11 per cent; her imports from the United States decreased 29.6 per cent compared with a decrease of 5.4 per cent in her imports from all countries. The British enacted a high tariff act in 1931 and followed up by establishing in the Ottawa Agreements of 1932 a tariff preference wall around the Commonwealth. The share of the United States in the world's foreign trade fell by almost 30 per cent from 1929 to 1933.[7]

There could have been no more graphic illustration of the futility and danger of a policy of economic isolationism than the results of the Smoot-Hawley Tariff Act. There could have been no more vivid proof that in an interdependent world a policy of "begger-thy-neighbor" was disastrous to all neighbors.

Nor were high tariffs the only barrier erected. In an effort to insulate themselves from economic depression, and to capture dwindling markets from competitors, foreign nations applied on a wider scale than ever before the most effective device yet invented to diminish trade — the quantitative restriction on imports, and engaged in widespread bilateral barter arrangements, with distortions and uneconomic prices which are practically inherent in that method of trade.

This period also witnessed the last departures from a universal standard of exchange, and fiscal and monetary measures which matched

3. 42 Stat. 858 (1922).
4. 46 Stat. 590 (1930).
5. BECKER, HOW NEW WILL THE BETTER WORLD BE 220 (1944).
6. HULL, THE MEMOIRS OF CORDELL HULL 355 (1948).
7. *Id.* at 355-56.

the introversion of the trade measures which had been adopted by the major participants in international trade. Competitive devaluations of currency, and the imposition of stringent exchange controls over current transactions as well as capital transfers, paralleled the restrictive measures in the field of trade. To these were added, partly in aid of barter arrangements, a wide variety of multiple currency practices, so that, in terms of world trade, it was impossible in many instances to determine the value of a unit of currency.

In every country there were groups which believed in and were intent upon lifting prices, increasing employment, and otherwise restoring domestic trade and industry by domestic measures, and favored import embargoes and higher tariffs to keep out imports which might undercut the increased prices. In almost every country, these groups were beset by others who, while fully cognizant of the need for domestic measures, believed in calling a halt to the ever-increasing barriers to trade, and reversing direction in the interest of expansion of world trade, which they considered to be an indispensable element in the revival of the world's economy. Almost every country possessed counterparts of Moley and Peek on the one hand, and of Hull on the other, and Chief Executives who vacillated between them and steered an uneven course over the shoals.

The tide turned in 1934, the year of the Trade Agreements Act. By then it had been made clear that the Tariff Act of 1930 and the events which had ensued were an inadequate answer to the needs of the American people as a whole. The Trade Agreements Act authorized the President to enter into foreign trade agreements for the purpose of expanding American exports, on a reciprocal basis, that is to say, by offering to open the American market to greater amounts of imports. Specifically, he was authorized to reduce then-existing tariff rates by up to 50 per cent in exchange for compensatory concessions, and to protect the concessions thus received from nullification or impairment.[8] From 1934 through World War II the United States entered into bilateral trade agreements with twenty-nine countries, involving tariff concessions and a set of trade rules which protected those concessions from nullification by such devices as discriminatory internal taxes on imported products which were not applied to the nationally-produced article.[9] In 1947 these were consolidated and refined, in the General Agreement on Tariffs and Trade.[10]

8. 48 Stat. 943 (1934).
9. Sub-Committee on Customs, Tariff and Reciprocal Trade Agreements, Report to the Committee on Ways and Means on United States Customs, Tariff, and Trade Agreement Laws and Their Administration 30 (1957).
10. 61 Stat. 716 (1947), 19 U.S.C. § 1201 (1958).

The Trade Agreements Program was important as much for what it meant in stopping deterioration in cross-boundary economic relations as for its positive accomplishments during the pre-war period. The trade rules in the bilaterals significantly did not outlaw generally the import quota (neither the United States nor foreign countries would go so far), although they did set forth the rule of non-discrimination in the application of tariff rates and in such matters as internal taxation. No meaningful rules of the road regarding exchange controls as they affected trade were established, although some agreements contained various kinds of exchange control provisions.

In addition, after the failure of the London Economic Conference in 1933, only limited efforts were made to create monetary stability on an international basis, the United States' contribution being principally the use of a rather small stabilization fund in assisting certain Latin-American nations to stabilize their currency. No code of monetary practices was negotiated, much less lived up to.

Nevertheless, by the time Hitler invaded Poland, an important change had occurred, perhaps the most important of all — a change in men's minds, caused by their reflection on what had gone before and their desire to avoid its repetition. Economic conditions had improved, governments had grappled with the problems of the day, and the philosophy of restrictive trade measures had been replaced by the outgoing attitude reflected in the Trade Agreements program. Finally, there was a growing realization, as Becker put it, that "if each country goes on its own and on the loose in the effort to revive business prosperity at home and promote its foreign trade it will not succeed very well in doing either."[11]

The post-war period, with the GATT, the International Bank,[12] The Monetary Fund,[13] and the effort to create an International Trade Organization,[14] saw a burgeoning of the effort to create one trading world, along with the similar effort at San Francisco to create the framework for one political world.

That this policy of freeing trade from artificial barriers was not acquired without paying a price is, of course, fairly obvious. It can hardly be otherwise in the legislative process, where it is rare that an important interest is utterly defeated. When the trade agreements program was put forward in 1934, it was made quite clear that it was one of assisting American industry and agriculture, not injuring it.

11. BECKER, *op. cit. supra* note 5, at 221.
12. 60 Stat. 1440 (1945).
13. 60 Stat. 1401 (1945).
14. U.S. DEPT. OF STATE, PUB. NO. 3206, HAVANA CHARTER FOR AN INTERNATIONAL TRADE ORGANIZATION (1948).

While the "no serious injury" concept was muted in the early years of the program, it was never absent. And later it assumed major proportions when first the Administration under protectionist pressure created an "escape clause" procedure, and then the Congress itself in 1948 and 1951 wrote "peril points" and "escape clauses"[15] into the tariff negotiating procedure and the administrative framework of the ensuing tariff-cutting agreements.

In addition to the intensification of the safeguards against injury from tariff reductions represented by the peril points and escape clause provisions, there was increasing difficulty in persuading Congress to grant additional tariff-cutting authority. The high-water mark was the 1945 Extension of the Trade Agreements Act,[16] which granted authority to reduce tariffs by up to 50 percent of the rates in effect in 1945, a considerable addition to the original grant of authority to reduce by 50 per cent the 1934 rates. Since 1945, the additional authority has been modest indeed — 15 per cent tariff-cutting authority

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15. The Trade Agreements Extension Act of 1951 §§ 3-4, 65 Stat. 72 (1951), as amended, 72 Stat. 675 (1958), 19 U.S.C. §§ 1360-1361 (1958), sets forth the "peril points" procedures. Sections 6-8 of the Act, 65 Stat. 73 (1951), as amended, 69 Stat. 165 (1955), 19 U.S.C. §§ 1363-1365 (1958), set out the "escape clause" procedures.

Briefly, as to "peril points" procedures: before entering upon negotiations with foreign countries for reciprocal tariff reductions, a list is made up of articles considered for possible "modification of duties and other import restrictions" and published; the Tariff Commission investigates and makes a report to the President on each such article as to the limit to which such modification may be made "without causing or threatening serious injury to the domestic industry producing like or directly competitive articles." In subsequent negotiations the President may "breach" these "peril points", but if he does he must report why he has done so to the Congress.

If the existing tariff duty on a listed article which has already been the subject of a trade agreement concession is found by the Tariff Commission to be below the "peril point" for the article, (a) the Tariff Commission must immediately institute an "escape clause" proceeding with respect to such article, and (b) the President must report to the Congress why the trade agreement which is thereafter negotiated does not provide for modification of the duty to the recommended "peril point."

As to "escape clause" procedures: If a concession has been made in a trade agreement upon a product, any "interested party" (or the President, or either House of Congress, or either the House Ways and Means Committee or the Senate Finance Committee, or the Tariff Commission on its own motion) may apply to the Tariff Commission for an investigation and then the Commission must investigate, to determine whether the product is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products. The Tariff Commission reports the results of its investigation to the President and its recommendations. If it finds that relief is warranted, these recommendations may be withdrawal or "modification" of the concession, in whole or in part, or the establishment of import quotas, to the extent and for the time necessary to prevent or remedy such injury. The President may reject the findings, or the recommendations in whole or in part, but if he does he must report to the House Ways and Means Committee and to the Senate Finance Committee the reasons for his action.

16. 59 Stat. 410 (1945).

in the 1955 Act,[17] spread over three years, and 20 per cent in the 1958 Act,[18] which in fact will be spread over a greater period.

Until 1960-1961 the effect of the intensification of safeguards against injury has been more psychological than real. It is true that peril points have not been breached — as they can be legally.[19] But the product-by-product listing practice approved by Congress[20] and the naturally cautious approach of a Tariff Commission whose sensitive antennae catch protectionist murmurings before they reach high decible proportions has been offset to some extent in that up to now there has been sufficient water in the rates to permit a quite respectable showing by the United States in negotiations.

The same is true of the escape clause. While the record in the past ten years shows watches, bicycles, and lead and zinc securing escape clause relief; so-called "voluntary" action by foreign countries limiting their exports to the United States of textiles, flatware and other products; and oil import restrictions imposed because of supposed "national security" reasons, the resistance by successive Administrations to higher duties and quotas on trade agreement items has ranged from moderate to stout, and, trade-wise, only lead and zinc and oil can be called relatively major in proportions.

This respectable if not precisely heart-warming performance in the administration of safeguards which were more or less forced upon the Administration by protectionist pressures, must however be viewed against a background of very modest forward movement and, what may be most important, the almost complete discounting by our trading partners of our ability to maintain important momentum toward further meaningful reductions in trade barriers. More than anything else, the defeat of the ITO Charter in the United States in 1948-1949 convinced Europeans, especially, that our high-water mark in reducing trade barriers had been reached, and that while they might reasonably expect a stiff rear-guard action by us against efforts to erode seriously the gains made, it would be unreal to look for much more than token advances. They could expect, and would get, rhetoric, and perhaps enough by way of future tariff negotiations to keep the franchise of a Trade Agreements Program, but not really much more.

17. 69 Stat. 162 (1955).
18. 72 Stat. 673 (1958).
19. See note 15 *supra*.
20. The detailed procedure followed in trade agreement negotiations was spelled out by the Administration in writing, and was included as appendices to the House Ways and Means reports on the bills which became the 1955 and 1958 Trade Agreements Extension Acts. See H.R. REP. No. 1761, 85th Cong., 2d Sess. 129-35 (1958); H.R. REP. No. 50, 84th Cong., 1st Sess. 81-86 (1955).

In short, after 1949 the Trade Agreements Program did not hold out to them the prospects of a further major advance into the United States market. In fact, as events have shown, they underestimated their own growth prospects, and our ability to contain our periodic recessions. But that they had respectable grounds for their beliefs, although perhaps prematurely so, it would be difficult to deny. At any rate, it was such an analysis on their part that probably had more to do than any other single factor — with the possible exception of the desire from Franco-German rapproachement — with the movement toward the formation of the European Coal and Steel Community and the European Common Market. The hopes for one trading world, like those for one political world, having been seriously dampened, the avenue of regionalism, with all its known pitfalls, beckoned. In economic terms, the possibilities of a wider European market overcame the known trade-diverting effects of such a market[21] because of the very uncertain prospects for significant gains in the American market, and the European countries' desire to insulate themselves as much as possible from the effects of possible, if not probable, United States depressions.

Nor was the United States in a strong position to gainsay the choice, even had it wished to repeat its antagonism of World War I years to European preferential arrangements.[22] Apart from the political attractiveness of Franco-German cooperation in the face of growing Soviet power, the United States was hardly able to hold out the prospect between 1949 and 1955 of further substantial opening of the American market. And when the United States was only able to secure with difficulty 15 per cent authority in 1955, and then utilized only a little over 4 per cent tariff-cutting authority in the 1955 negotiations, it was quite clear that the momentum of the program was gone.

The 1958 Extension of the Trade Agreements program was presented to the Congress as essentially a defensive move. Twenty-five per cent tariff-cutting authority was requested[23] — 20 per cent was granted — in order to be able to secure comparable reductions in the Common Market's external tariff so as to lessen the trade-diverting effects of the Common Market — in order to reduce, not eliminate, the discrimination against American exports, and hence, in order to protect American exports to the Common Market from a serious cutback.

21. See Metzger, *Regional Markets and International Law,* PROCEEDINGS, AMER. SOC. INT'L LAW 169, 172-73 (1960).
22. See VINER, THE CUSTOMS UNION ISSUE 24-25 (1950).
23. H.R. REP. 10368, 85th Cong., 2d Sess. (1958).

We are now preparing to negotiate upon the basis of the 1958 Act. With so many soft spots in our economy, with rising protectionist sentiment, with what has been reported to be extremely difficult "peril points," with little water left to be squeezed out of the tariff rates on items which have survived "peril points," it would be foolhardy to expect that our product-by-product listing and peril point process will permit this negotiation to be of major significance in itself. It is likely that we will be able in the end to utilize, at most, half of our 20 per cent authority and it will be a surprise if the cuts are in the areas of greatest interest to our trading partners. It may nevertheless be expected that the Common Market will do somewhat better on their side, since they must know that unless they do, our agricultural interests and perhaps others might compel retrogressive action here which would be harmful to their interests and ours.

If we are permitted to look beyond the 1961 Tariff negotiations, trusting that we shall have achieved something of a holding position, where will we be? We will be before the Congress with a 1962 Trade Agreement Extension Bill, at a time when the completion of the Common Market is within sight — when the last of the cuts in the respective internal tariffs will be four to five years away; when in all likelihood a variety of special agricultural agreements will have further complicated our exports to the Market; and when, perhaps, still further special arrangements are made with the Outer Seven which we shall have been able, with luck, to influence so as to curtail their adverse effect upon our exports.

The 1962 Extension will thus be the next great watershed in our trade policy. If our domestic economy does not improve substantially over what it has been this past year; if our balance of payments does not materially improve; in short, if our economic situation remains about what it is now, the prospects are ominous. Even if our economy moves upward, the problem of resuming momentum in our trade policy will be serious; but without a reversal in the economic trend, it is very doubtful that a meaningful extension of the Trade Agreements Program can be secured from Congress.

But assuming that the Administration is in a position to go before Congress with a fair chance of securing a good program, what should it want?

There are some advocates of a liberal foreign trade policy who believe that we must eliminate peril points, eliminate product-by-product listing and bargaining, and secure sufficient tariff-cutting authority to match the remaining internal tariff removal within the Common Market — that is to say, secure a five-year renewal with 50 per cent

authority, and authority to bargain in broad tariff categories without limitation because of an advance judgment that reductions will injure domestically-produced articles. Only in this way, they say, could there be sufficient interest on the part of foreigners to warrant another tariff-cutting round. Others would add to this prescription the elimination of the escape clause. And still others believe that an even more ambitious undertaking must be set afoot — a North Atlantic economic union sounding in the eventual elimination of all trade barriers within a defined geographic area, but whose specifics have not been spelled out.

Then there are those who would in effect end the program, and accept the political divisions within the free world and the other consequences that would ensue from the gradual closing of markets within inward-looking regional groupings. That this protectionist prescription, or action tending toward it, is unpalatable to the writer goes without saying.

However, as to the first, more outward-looking program, there are also deficiencies, largely as a consequence of its overly ambitious qualities. All countries have adopted the injury concept, and it seems quite unreal to expect any to give it up. Any effort to eliminate the escape clause therefore appears to be a hopeless non-starter; in fact, the performance of the Tariff Commission during the past year has been quite responsible, which may be another way of saying that its reports justifying its many refusals to recommend escape clause relief sound sensible.

It is also extremely doubtful that peril points can be eliminated. The "peril point" conception was formulated in order to provide an additional "preventative" safeguard against injury to domestic industry, which had complained that "escape clause" relief came much later, if at all, after an injury had already occurred. At a time, 1962, when by all prognoses there will still be a substantial number of unemployed persons in the United States, it is simply idle to imagine that the forces which had the strength to secure the enactment of the "peril point" procedure will not be able to muster the lesser strength that is needed to maintain the existing procedure.

But there is considerable merit in category by category listing and bargaining, and a way to utilize peril-pointing so as not to imperil meaningful bargaining. If negotiations were to aim at an overall percentage reduction in the external tariffs of the various countries, to be derived from groups of related tariff items of interest, it should be possible to make an agreement, conditional upon adjustments being made to make up any shortfall resulting from post-negotiation peril-

pointing. This peril-pointing could continue to be on a product-by-product basis after negotiation of the conditional agreement. If, for example, we should seek a five-year, 50 per cent extension authority and set as our negotiating goal that figure, to be achieved by the end of the period, peril-pointing would begin after a negotiation resulting, let us assume, in a conditionally-agreed 35-40 per cent round-robin reduction, in broad tariff categories. Peril-pointing might then result in a 5 per cent overall reduction in this figure, in which case the other nations could opt to reduce, in mutually-agreed categories, proportionately. Actual reductions would still be proclaimed individually.

This proposal, which is similar to one proposed by the French some years ago, would certainly not be easy of acceptance by the Congress. But its economic appeal to our trading partners would be substantial, its approval would be a signal of regained momentum in our trade policy, and its effect upon those who see portents of United States withdrawal beneath our staunchest words would be significant. These objectives are important to the successful conduct of foreign relations. On the other hand, the injury concept would remain, albeit with the emphasis upon agreement to reduce, not refusal to negotiate; the escape clause would still enable those who can prove that injury has occurred to secure relief; and a Trade Adjustment Program,[24] such as the one first introduced in the Senate in 1954 by then Senator Kennedy, could be added to the available remedies for industries found to have been injured as a consequence of imports.

Such a program could regain forward movement toward reduction of trade barriers. It would of course not have startling results. But it would again pry open the door looking toward that one trading free world which, however distant, still beckons, if only because others have such obvious defects.

24. Such a program envisages that if a domestic industry demonstrates in an escape clause proceeding that it is being injured as a result of imports which have increased, the President would be able to give relief to the industry through small-business loans, retraining and earlier retirement benefits under Social Security for displaced workers, etc., instead of or in combination with import restrictions.