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The Trade Bill—The View From Capitol Hill

*Thelma J. Askey**

I. INTRODUCTION

Today, I am speaking on the Omnibus Trade and Competitiveness Act of 1988, commonly known as the Trade Bill, as viewed from Capitol Hill. This bill has been four years in the making, so it is not easy to sort through the dust for a clearer perspective of what was done by Congress and the Administration and where we should go from here as we implement the bill's provisions. I would like to talk in more general terms, focusing on political implications and on the expectations I see in Congress with respect to the Trade Bill's provisions.

II. THE PROCESS OF ACHIEVING THE TRADE BILL

The process of achieving this legislation has been described in a variety of colorful ways. Some viewed the bill as armed conflict against an unyielding Administration and a bunch of out-of-touch free-traders complete with soldiers and battlefields; the ground was certainly littered when we finished. Others viewed it as an immoral erosion of free-trade principles by Congress and a weak-willed Administration, a bill that would surely lead to a multitude of trade wars. My favorite analogy, and one that I believe is closest to the truth, was offered by one of the Members of the Ways and Means Committee. He said it was like herding cats. In addition to capturing the reality of dealing with diverse and multidirectional interests, this analogy deflates some of the self-importance that is a natural by-product of such a massive undertaking. I believe that the author of the bill has not lost sight of the fact that the reduction of the U.S. budget deficit, rather than the enactment of omnibus trade bills, should be the principal mechanism for eliminating our trade deficit and correcting currency imbalances.

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III. THE IMPACT OF THE TRADE BILL ON TRADE POLICY

The Trade Bill's existence has become a rather exaggerated symbol of the forced political response to a failed trade policy; it will have a significant impact on U.S. balance of payments, on the competitiveness of U.S. firms, and on the success of the U.S. in achieving its goals in multilateral and bilateral trade negotiations. Although the bill will provide some help in all these areas, especially as leverage in trade negotiations, it should not be considered the miracle drug.

The bill has made important improvements (other than renewal of trade negotiating authority, which I believe is of significant importance) and has given U.S. firms some added protection against unfair trade practices in the form of improved trade law procedures. However, this bill will never substitute for individual initiatives and aggressive efforts by U.S. firms to increase competitiveness and develop market shares. Nor will it substitute for the all important continued effort to reduce the fiscal deficit. And, as was discussed last night by Ambassador Holmer, the U.S. needs to find ways to narrow the gap between investment demands and savings.

Also, the Trade Bill is no substitute for a forceful, balanced and coordinated trade policy. The government's primary role is to conduct policy in a manner that 1) provides a fair and open trading environment with some degree of certainty as to what the rules of the game are, 2) enhances U.S. competitiveness at home and abroad through negotiation and enforcement of U.S. trade laws, and 3) along with efforts by businesses themselves, ensures continuing adjustment to the rapidly changing dynamics of trade.

I do not believe we have achieved such a policy as of yet, although we are moving in the right direction. In my view, the desired direction lies between the two policies we have seen most recently: the former defensive and too inflexible trade policy that existed at the height of economic pressures caused by the strong dollar; and, the reactive, somewhat disorganized trade policy that began to form well before final passage of the trade bill, which has been preoccupied with the politically comfortable short-term results.

IV. THE PENDULUM OF POWER

The pendulum of power—which is a favorite topic in Washington—has swung to the Congress. This, I suppose, is natural

when major legislative reform is undertaken. Constitutional power as it affects trade policy is balanced between the foreign policy powers of the President and Congress' international commerce power. Congress' responsibility is to reflect the will of the people (trading community, labor & consumers, etc.) through legislation. Further, Congress has the responsibility, as adjunct-oversight to the exercise of its constitutional power, to advise and guide the Administration in the development of trade policy, and to act as a check on the Executive.

The Executive's responsibility is to implement the will of the people as expressed by Congress. In the exercise of its foreign affairs power, the Executive's responsibility is to develop trade policy with the advice of Congress and to try to effectuate that policy through negotiations with foreign governments and to act as a check on the Congress.

Legislation is a rather blunt instrument for carrying out Congress' mandate. Thus, Congress struggles to achieve effective legislative solutions to complex problems that often require flexibility and discretion. The Administration, however, has the opportunity to exercise more subtlety, responsiveness, and the necessary flexibility if discretion is given by Congress (or boldly exercised under the Executive powers). Today, the Executive has become too reactive to Congress. Perhaps this is so because the Executive is worn out from fighting protectionist pressures in Congress, defending themselves from a newly aggressive Congress and trying to prevent the power pendulum from swinging too far.

However, with the Trade Bill and the election behind us, and the Uruguay Round moving inexorably toward a positive conclusion, Congress and the Administration have moved trade policy toward a more common ground and have together set their sights on the future with more realistic expectations. Faith in the multilateral process and in the General Agreement on Tariffs and Trade (GATT) has been restored. Reinforced with the Trade Bill, Congress nevertheless seems to want to achieve as much as possible through negotiation rather than confrontation. Ambassador Yeutter's extraordinary success with our trading partners, while in a very difficult economic environment, has served as an excellent complement to the Trade Bill. Of course, some areas such as agriculture and intellectual property rights are on shakier ground than other trade agenda items such as services, dispute settlement and investment.

The pendulum of power will naturally begin to swing back to the Administration because negotiations will become its prerogative and priority, with continued Congressional oversight. Even though the 435 members of the House and their 100 counterparts in the Senate might desire to act as negotiators and Secretary of State, this is not possible. The implementation of the Trade Bill is now an administrative function, albeit with the close oversight of Congress.

V. ACHIEVEMENTS OF THE TRADE BILL

There were basically two significant achievements that resulted from the development and passage of the Trade Bill. The primary achievement was the renewal and expansion of trade negotiating authority. Trade negotiating authority should have been the lifeblood of the legislative effort from the beginning. Other extraneous and often more politically-charged issues such as the mandated reductions in so-called excessive trade surpluses, the Bryant amendment regulating certain foreign investments, and the Toshiba sanctions, occasionally diverted our attention and perhaps clouded our judgment. Nevertheless, we achieved very generous negotiating authority, basically unencumbered with restrictions that we feared would undermine our goals in multilateral negotiations.

The second primary achievement of the Trade Bill cannot be found in its provisions. It occurred well before enactment of the bill itself. That achievement is the readjustment of trade policy in such a way that Congress, the Administration, and the U.S. business community involved in trade can all work together to develop and achieve our trade policy goals. These goals are more ambitious and aggressive than in the past, and expectations are high. Yet most of the suspicion, frustration, politicization and working at cross-purposes was aired, and to a great extent resolved, through the process of achieving this omnibus trade legislation.

The legislation itself did not need to be passed to achieve most of the changes in our trade laws. This is especially true with respect to sections 301 and 201 governing unfair trade practices and adjustment of import competition. Many of the bill's provisions are primarily changes in emphasis. But the process in enacting the Trade Bill was invaluable in achieving the necessary shift in trade policy that restored faith in the Administration, in Congress (that it wouldn't succumb to overly protection-

ist pressures), and in the trading community itself—that it could compete without the fancy footwork that was originally demanded in the earlier drafts of the bill.

VI. REACTION OF THE BUSINESS COMMUNITY TO THE TRADE BILL

Initially, there was very little enthusiasm in the business community for embracing any of the trade provisions of this bill other than the authority to continue negotiations. Positions were developed on sections 201, 301, and on a variety of provisions as they were proposed and debated. But generally there was a policy of containment, and in the process some marginal improvements in trade law were achieved. Most of the business community saw this bill only as a necessary safety valve for the political and economic tensions over trade policy that had reached a fevered pitch in the 99th Congress. These tensions were threatening to undermine further multilateral and bilateral agreements designed to expand trade opportunities, especially in new areas such as services and intellectual property rights. The fact that the value of the dollar depreciated significantly, especially against the yen, helped to relieve a great deal of the political pressure and allowed us to proceed with more moderate legislation. When the dust had settled, the value of the bill was described more in terms of what we did not do.

Thus, Congress laid aside some of the most onerous of the original provisions. We did not pass the Gephardt amendment; we did not eliminate the discretion of the U.S. Trade Representative; we did not enact radical provisions in the area of targeting, downstream dumping or diversionary dumping; and we did not enact a multitude of special interest provisions. Furthermore, changes in the Foreign Corrupt Practices Act and repeal of the Windfall Profits Tax were probably more important to the business community than any of the trade law changes, as long as the blatantly protectionist provisions were dropped.

VII. CONCLUSION

As we look forward to the 101st Congress and to the closing years of the Uruguay round negotiations, implementation of the Trade Bill will be a key factor in maintaining the consensus in support of these negotiations. It will also be a key factor in ensuring as much cooperation as possible between the Administra-

tion and Congress on trade policy objectives, negotiating strategy, and on implementation of any agreements, whether bilateral or multilateral.

However, the Administration needs to chart its course carefully during these first years of implementation to ensure that the sometimes unrealistic expectations of Congress and the private sector do not undermine the achievement of significant, yet realistic trade policy goals. The Trade Bill is rife with mandatory procedures, timetables, and studies that could escalate trade conflicts and politicize them to such a degree that viable solutions would become impossible.

The first minefield to walk through is super-301. This procedure has the potential to backfire if the list of identified trade liberalization priorities becomes so extensive that resources and negotiating leverage cannot resolve them effectively. Also, the absolute tie in some cases between U.S. estimates of the value of removal of certain trade barriers to U.S. exports and the requirement that this value must be transferred by our trading partners to the U.S. incrementally over three years, flies in the face of recent pleas that our 301 process results in more open trade for all the world. Finally, the danger of labelling specific countries as "pervasive" violators ignores the good trading relationship we have with most countries and is counter-productive to achieving effective negotiated settlements in those areas where trade problems persist.