

Northwestern Journal of International Law & Business

Volume 8
Issue 2 *Fall*

Fall 1987

Introduction Symposium: The Political Economy of International Trade Law and Policy

Kenneth W. Abbott

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njilb>



Part of the [International Trade Commons](#)

Recommended Citation

Kenneth W. Abbott, Introduction Symposium: The Political Economy of International Trade Law and Policy , 8 Nw. J. Int'l L. & Bus. 279 (1987-1988)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Law & Business by an authorized administrator of Northwestern University School of Law Scholarly Commons.

SYMPOSIUM THE POLITICAL ECONOMY OF INTERNATIONAL TRADE LAW AND POLICY

Introduction

*Kenneth W. Abbott**

As this Introduction is written, the law of international trade stands at a major crossroads. In Congress, the House of Representatives and the Senate are attempting to consolidate two massive omnibus trade bills.¹ These bills authorize the President to enter into a new round of multilateral trade negotiations, amend the import relief laws, prescribe measures to deal with “unfair” foreign trade practices, and in general affect virtually every area of United States law concerned with international trade. Provisions like the Gephardt Amendment,² designed to exert pressure on countries which have large trade surpluses and engage in trade practices that the United States considers unreasonable, have been criticized as “mean-spirited”³ and protectionist, although the reality is considerably more complex.

* Professor of Law, Northwestern University School of Law. J.D. Harvard Law School, 1969.

¹ H.R. 3, 100th Cong., 1st Sess., House version passed Apr. 30, 1987 [hereinafter H.R. 3, House version], Senate version passed July 23, 1987.

² H.R. 3, House version, *supra* note 1, § 126.

³ *See, e.g.*, 133 CONG. REC. H2781-82 (daily ed. April 29, 1987)(remarks of Rep. Frenzel).

In Geneva, the contracting parties of the General Agreement on Tariffs and Trade ("GATT") have begun the Uruguay Round of trade negotiations.⁴ Like the Tokyo Round in the 1970s, these negotiations will address such issues as tariffs, non-tariff barriers to trade, the role of developing nations, and the functioning of the GATT institutions.⁵ The Uruguay Round will also attempt to extend at least a framework of GATT principles to entirely new areas of economic activity, including trade in services and intellectual property.⁶ Yet the negotiations opened against a background of acrimonious disputes among the major trading nations over allegedly protectionist actions, and such disputes seem likely to continue⁷ in spite of the "standstill and rollback" agreement adopted at the outset of the Round.⁸

The lawyer who seeks to understand these sweeping developments cannot be content with the positivistic descriptions of statutes and agreements that occupy so prominent a place in today's law reviews; far less content can the lawyer who seeks to participate in the evolution of international trade law by advocating particular policies. In each case, the attorney requires a deeper understanding of the political and economic forces, ideas, and institutions that shape trade law and policy.

The *Northwestern Journal of International Law & Business* has designed this symposium on the political economy of international trade law and policy to help meet the need for deeper insights. The symposium includes contributions by Professor Edward John Ray, an economist, and by Professor Judith Goldstein, a political scientist, and Michael Borrus, a lawyer engaged in the study of trade policy. The *Journal* sought articles that would perform three functions: 1) introduce international lawyers to some of the major theories of trade policy currently accepted in other intellectual disciplines; 2) provide ample citations to additional theoretical and empirical works; and 3) argue a specific thesis relevant to the current trade policy debate. The works presented here fulfill all of these goals. In this Introduction, I will attempt only to summarize, compare, and place in context the theories which the authors themselves advance.

⁴ See Ministerial Declaration on the Uruguay Round, Sept. 20, 1986, reprinted in GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 33d Supp. at 19 (1987)[hereinafter Ministerial Declaration].

⁵ See Ministerial Declaration, *supra* note 4, pt. I.

⁶ See *id.* pt. I(D), pt. II.

⁷ For a recent example of a protectionist act taken in retaliation for alleged foreign protectionism, see N.Y. Times, Dec. 18, 1987, at 1, 33, col. 1 (Midwest ed.) (congressional vote to prohibit Japanese firms from participating in certain public works projects).

⁸ See Ministerial Declaration, *supra* note 4, pt. I(C).

There are two general theoretical approaches to the analysis of trade policy, or foreign policy more generally. The first focuses on the external position of the state usually seen as a rational political unit vis-a-vis other states interested in a particular issue.⁹ Thus, for example, some theorists argue that a state that is economically and politically predominant, like the United States after World War II, will prefer an open world economy and will have the power to create rules and institutions supporting such a system. Without a predominant state, however, the political cooperation necessary to create an open trade regime will be very difficult to obtain.¹⁰ The second theoretical approach focuses on the domestic political processes of the state. Under this approach, it is important to note, a state will not necessarily be seen as acting rationally in its own interest.¹¹

The articles in this symposium are both of the second school, although echoes of the first can sometimes be heard, as in Borrus and Goldstein's discussions of declining United States power and competitiveness.¹² Both Articles focus, moreover, on the politics of the United States. Yet the two works analyze similar political phenomena in quite different ways, and in that respect are valuable complements.

Professor Ray advances an analytical framework designed to comprehend the many factors influencing a nation's trade policy. His model is very instructive, as it is an amalgam of two conflicting theories of the domestic political process.¹³ On one side, "micro" theories hold that trade policy simply reflects the net result of political conflict among interest groups contending over the potential gains from free trade or protection.¹⁴ A variety of economic factors, outlined by Ray, determines the interests and relative strength of these groups, and thus influences the outcome of the conflict at different times. Most micro theories detect a continuing bias in favor of protection, however, since consumers—the natural opponents of protection—are among the interests least able to organize and influence the political process.¹⁵ According to Ray, micro

⁹ See Borrus & Goldstein, *United States Trade Policy: Institutions, Norms, and Practices*, 8 NW. J. INT'L L. & BUS. 328, 332 n.10 (1987).

¹⁰ For a thorough and critical analysis of this argument, see Snidal, *The Limits of Hegemonic Stability Theory*, 39 INT'L ORG. 579 (1985).

¹¹ See Borrus & Goldstein, *supra* note 9, at 332 n.10. For an analysis of international trade law that takes account of both approaches, see Abbott, *The Trading Nation's Dilemma: The Functions of the Law of International Trade*, 26 HARV. INT'L L.J. 501 (1985).

¹² See, e.g., Borrus & Goldstein, *supra* note 9, at 329-31.

¹³ See Ray, *Changing Patterns of Protectionism: The Fall in Tariffs and the Rise in Non-Tariff Barriers*, 8 NW. J. INT'L L. & BUS. 285, 288-89 (1987).

¹⁴ Whatever the outcome, such conflict itself consumes substantial resources. See J. BUCHANAN, R. TOLLISON & G. TULLOCK, *TOWARD A THEORY OF THE RENT-SEEKING SOCIETY* (1980).

¹⁵ See Ray, *supra* note 13, at 291-92. For reviews of micro theory, see Baldwin, *The Political*

theories can also help explain the nature of the measures used to provide protection, particularly the growing popularity of non-tariff barriers; this is an area deserving of further research.¹⁶

On the other side, "macro" theories hold that government officials act independently of interest group pressures in furtherance of durable community values like economic growth and full employment and foreign policy goals like aid to developing nations.¹⁷ These goals and values typically point to a more open trade posture, although changes in underlying economic factors can also vary the government's perception of the national interest.

Ray argues that a nation's trade policy is "a political equilibrium that is the product of both self-interest (the micro view) and shared values (the macro approach)."¹⁸ The pursuit of community values by government is the main motivating force; that effort is "undermined," or even "sabotaged," by interest group pressures.¹⁹ Ray advances a tripartite explanation of national trade policy, based on the interaction of these two forces, which is reminiscent of Justice Jackson's famous analysis of presidential power.²⁰ When national policies and net interest group pressures both favor liberalization, trade policy will be clearly liberal; in the United States, this was the case during the post-World War II period. When both forces favor protection, policy will be protectionist, as in the United States during the late nineteenth century. When the two factors are opposed, however, national policy will be ambiguous, with liberal initiatives blunted by interest group pressures. Ray sees this situation in

Economy of Protectionism, in *IMPORT COMPETITION AND RESPONSE* 263 (J. Bhagwati ed. 1982); Baldwin, *Trade Policies in Developed Countries*, in 1 R. JONES & P. KENEN, *HANDBOOK OF INTERNATIONAL ECONOMICS* 571 (1984).

¹⁶ See Ray, *supra* note 13, at 302-06. While import-competing firms are, as a rule, better able to organize and lobby than consumers, an industry with a relatively large number of firms may face free-rider problems that prevent it from mobilizing at an optimal level. See *id.* at 291-92, 304-06. Ray asserts that such industries will favor non-tariff measures, because they can be structured to grant disproportionate benefits to politically active firms, thus overcoming the free-rider problem. *Id.* at 305-06. This is an intriguing insight, but it does not seem to reflect actual practice, at least in the United States. For example, voluntary export restraint agreements, perhaps the most important non-tariff measures, typically allocate quota rents to the foreign sellers. See *id.* at 308.

¹⁷ For a discussion of the ability of government to pursue such goals in the face of interest group pressure, see E. NORDLINGER, *ON THE AUTONOMY OF THE DEMOCRATIC STATE* (1981).

¹⁸ Ray, *supra* note 13, at 289. For a discussion of other mixed theories, see Abbott, *supra* note 11, at 515-16.

¹⁹ Ray, *supra* note 13, at 291, 310.

²⁰ Jackson's tripartite analysis—congressional authorization for presidential action, congressional opposition, and congressional silence—appears in his concurring opinion in the Steel Seizure Case, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952)(Jackson, J. concurring). The analogy is not irrelevant, since the President is often associated with the pursuit of general community values, Congress with the pressure of special interest groups.

recent United States trade policy: he fears that the national commitment to liberalization is in danger of being cancelled by mounting pressures for protection.²¹

Borrus and Goldstein also see current United States trade policy as ambiguous and contradictory, but they advance a much different theoretical explanation for that state of affairs, and appear to draw quite different normative conclusions about it. In general, they argue that United States trade law as presently constituted is ill-suited to deal with the "enormous strains of adjustment confronting the nation,"²² as comparative advantage in major industries shifts to other countries and as massive trade deficits produce a growing foreign debt. Specifically, Borrus and Goldstein focus on the problems of the United States semiconductor industry, arguing that it is the victim of strategic trade policies aggressively practiced by Japan and other countries and that United States trade law has no satisfactory response to competition of this kind.²³

An industry like semiconductors, seeking innovative government assistance, will face—as in Ray's model—opposition from interest groups supportive of free trade. The most effective groups will consist of major exporters of goods and services, firms that favor liberalization and fear foreign retaliation. Borrus and Goldstein view these groups as relatively strong.²⁴

More important, however, an industry like semiconductors must deal with the established institutions of trade law—the statutes, agencies and procedures that channel requests for relief from import competition, closed foreign markets, and other trade problems—and the ideas or ideologies embedded in those institutions. If the prevailing ideologies and institutions are not attuned to the industry's problems, relief will not be forthcoming or will be ineffective. The contrast between this vision of the political process and Ray's is striking. Both see a role for ideas or values apart from pure interest group politics, but Ray sees government as seeking to further current national goals and community values, while Borrus and Goldstein see the norms and institutions of government as

²¹ Among Ray's examples are the statutes implementing the Generalized System of Preferences and the Caribbean Basin Initiative. Both programs were aimed at advancing national goals, especially assistance to developing nations, but were seriously compromised by the many exceptions incorporated in the statutes. Ray, *supra* note 13, at 290-91, 310-11.

²² Borrus & Goldstein, *supra* note 9, at 331.

²³ The real world relevance of strategic trade policy, a relatively recent development in international economic theory, is itself highly controversial. See STRATEGIC TRADE POLICY AND THE NEW INTERNATIONAL ECONOMICS (P. RUGMAN ed. 1986); G. GROSSMAN & J. RICHARDSON, STRATEGIC TRADE POLICY: A SURVEY OF ISSUES AND EARLY ANALYSIS (1985).

²⁴ Borrus & Goldstein, *supra* note 9, at 333. See generally I. DESTLER & J. ODELL, ANTI-PROTECTIONISM: CHANGING FOCUS IN UNITED STATES TRADE POLITICS (1987).

inherited from earlier eras, inflexible, and often out of step with current values and interests.

Institutions reflect an earlier social consensus or bargain among powerful interest groups. They are consciously designed to be “sticky,”²⁵ or resistant to change, so that disgruntled groups or independently minded officials cannot easily undermine the hard-won consensus or bargain. Ideas, ideologies, and values (like “free trade” or “fair trade”) are embedded in institutions and internalized by relevant actors, legitimating the institutions. Until an alternative ideology is widely accepted, the ideas of earlier eras limit the actions government is prepared to take.²⁶

Analyzing the trade law of the United States, Borrus and Goldstein trace the emergence of the ideas of free trade, fair trade, and adjustment assistance, and the institutions and “forms of action” in which they are embodied, over three historical periods. These three sets of norms and institutions, cumulated over time, are now the only categories available for dealing with the trade problems of the United States economy, whether of declining industries like steel, recovering industries like automobiles, or growth industries like semiconductors.²⁷ The only ideological alternative, protectionism, remains discredited. In the case of semiconductors, Borrus and Goldstein argue, none of these categories is appropriate for countering the industrial policies of Japan.

Clearly, given the powerful theoretical and normative conflicts between its contributors, this symposium alone will not provide the key to an understanding of international trade policy. Yet the authors’ provocative theses, expositions of theory, and extensive citations make it an excellent place to start. The *Journal* welcomes replies to this Symposium to help advance the theoretical and normative debate.

²⁵ Borrus & Goldstein, *supra* note 9, at 334.

²⁶ Goldstein has argued elsewhere that only a theory giving independent force to ideas and institutions—in contrast to theories focusing on the external position of states or on domestic interest group politics—predicts continuing support for liberal trade on the part of the United States. See Goldstein, *The Political Economy of Trade: The Institutions of Protection*, 80 AM. POL. SCI. REV. 161 (1986).

²⁷ Borrus & Goldstein, *supra* note 9, at 336.