

## CHAPTER 3

### *How the GATT Came to Intersect with the Regulatory Social Compact*

IN 1965, ATTORNEY Ralph Nader loaded a slingshot and lobbed at General Motors, one of the world's largest corporations. In a grim, fact-laden book, *Unsafe at Any Speed*, Nader criticized the design, production, and marketing of an unsafe car, the Corvair.<sup>1</sup> With this volley, Nader helped modernize America's approach to social regulation, calling for government regulation of business as well as public monitoring of such regulation. Nader became a liberal icon, devoting "his life to defending the American public against corporate negligence and government indifference."<sup>2</sup>

In the United States and other industrialized nations, activists such as Ralph Nader demanded, obtained, defended, critiqued, and monitored a wide range of regulations to govern discrimination, the environment and public health, and the workplace.<sup>3</sup> These "social regulations" were designed to achieve functional objectives such as ensuring certain workplace conditions or providing labeling or content information to consumers. Moreover, these social regulations were economy wide rather than sector-specific.<sup>4</sup>

In the 1960s to 1980s, the number and scope of social regulation expanded dramatically. But these regulations were not written in stone; the regulatory system grew and shrunk as markets and public priorities for regulation changed over time. Nonetheless, there was often wide public support for such regulation, especially in the area of environmental protection.

Many business leaders, however, understandably saw these regulations as costs to the bottom line instead of investments in the general welfare of their stakeholders. Business executives did not respond uniformly. Some firms quietly accepted such increased regulation; others saw it as an opportunity to gain market share from their competitors

because they could more quickly or more easily amortize the costs of regulation. However, most business leaders saw this trend as a major impediment, distracting business from responding to domestic and global market conditions.

These business leaders needed to be alert because market conditions were changing rapidly. The Kennedy Round, the sixth round of international tariff negotiations (1962–67), sponsored under the aegis of the GATT, had dramatically lowered tariffs, which helped Americans increase both their exports and their imports. Stores from Saks Fifth Avenue to Sears were bursting with goods from around the globe. The price and availability of these goods kept U.S. companies on their toes and helped dampen American inflation. But some Americans lost jobs as American firms lost market share due to foreign competition.

Trade's costs and benefits were simply not on the agenda of most Americans. However, a small, vocal, and growing minority of Americans joined economic nationalists in questioning the cost of trade and economic interdependence in the 1960s and 1970s. Their voices got louder in the 1970s, as European and Japanese firms captured growing shares of U.S. and global markets for industries as diverse as textiles and steel.

Members of Congress and some policymakers grew concerned about the fate of the workers and proprietors in these sectors, but the GATT limited their ability to use traditional protectionist tools such as tariffs. However, Washington is a town of ambitious creative individuals and ever so gradually, some sectors demanded and received other tools of protection such as voluntary restraint agreements or quota "arrangements." State and local policymakers were also "creative" in their approach to protection. For example, some states and cities passed ordinances requiring retailers to post signs noting, "Japanese Goods Sold Here," or "Communist (Soviet) Goods Sold Here."<sup>5</sup> Moreover, policymakers became more creative in their use of regulations—for example, procurement regulations—as a tool to discriminate among domestic and foreign producers. At the same time, business leaders began to understand that these regulations gave them a slight market edge over their foreign competitors. These executives had a home court advantage: They found it easier and cheaper to comply with domestic regulations than many of their foreign competitors.

The United States was not alone in its growing recourse to such NTBs in the 1960s and 1970s. Trade policymakers, economists, and business leaders around the world were very worried about the proliferation of these "invisible" barriers to trade. In 1939, economist Percy Bidwell wrote that the proliferation of these barriers stemmed from

“the steady extension of government regulation of domestic business.”<sup>6</sup> Yet not all NTBs are regulations (such as subsidies). Moreover, most regulations were not designed to distort trade. Why did these NTBs, especially regulations, seem to be proliferating? Nations were trading more at the same time that they were regulating more. But there was little international common ground on how to govern the trade distortions of these NTBs. During the Kennedy Round of trade negotiations, GATT signatories tried to negotiate common rules to govern NTBs. But in 1967, the U.S. Congress balked.

By the 1970s, however, Congress acknowledged that the United States would have to find international common ground on regulating NTBs. To do so, Congress would have to grant unprecedented authority to the executive branch at the very time that America was facing a constitutional crisis: an investigation of President Richard M. Nixon’s abuse of presidential powers. As pressure grew on President Nixon to resign, Congress seized greater control over trade policy-making.

In 1974, Congress passed the Trade Act of 1974 (PL 93-618), which granted new authority to negotiate such NTBs. The act provided for strict congressional monitoring of the scope of the negotiations and spelled out a process for adjusting U.S. law if necessary. The law also set up a system of advisory committees designed to make trade policy-making more democratic. But the act was historic for other reasons. In the Jackson-Vanik amendment, Congress explicitly linked trade policy to Soviet willingness to improve its human rights record. By so doing, Congress made social results an acceptable objective for some trade agreements and made it easier for groups not concerned with the economic effects of trade (such as those concerned about protecting dolphins) to influence trade policies.

#### AMERICA IN THE SIXTIES AND SEVENTIES

Americans were doing well in the 1960s. From 1965 to 1973, U.S. real growth in gross domestic product rose 1.6 percent, and real wages per hour increased at an annual rate of 2.6 percent. America was the confident world economic leader, the world’s leading exporter of goods, foreign investment, technology, and even culture. Although the United States was receptive to importing new products, people, and ideas from abroad, Americans may have taken their economic success for granted. Because of their enormous market share, shrewd management, and technological edge, many American executives, economists, and gov-

ernment officials may have assumed that the days of American economic dominance would never end.<sup>7</sup>

However, many of these same executives were laying the seeds for other producers and other economies to improve their productivity and standard of living. Many companies were expanding their overseas investment in people and technologies. At the same time, policymakers in other nations were doing everything they could to attract foreign investment by training their citizens to be productive workers and spending government funds on research and development. Global markets reflected these trends. American companies were losing market share in sectors where U.S. firms were long considered invulnerable, such as computers, aircraft, semiconductors, engines, steel, and automobiles. For example, in 1960, the United States had some 24 percent of the world's trade in manufactured goods, but by 1975, it had declined to some 18 percent, as other nations' share, such as Germany's and Japan's, increased. Moreover, America's trade surplus was slowly declining throughout the 1960s. U.S. companies and consumers increasingly depended on foreign producers for a wide range of goods from shoes to cameras. As a result, according to the President's Council on Competitiveness, by the 1970s, the United States was no longer "immune against the vicissitudes of other economies and the economic policies of their governments."<sup>8</sup>

America's slowly declining economic prowess, however, was not central to public concern. In the 1960s and 1970s, Americans were preoccupied with social and political issues such as civil rights, women's rights, the environment, poverty, and the escalating war in Vietnam. Some Americans took that debate directly to the public—door to door, marching in the streets, organizing sit-ins and teach-ins.<sup>9</sup> But many other Americans saw such actions as an assault on American values and authority figures. As Vice President Spiro Agnew said in 1969, "policy cannot be made in the streets."<sup>10</sup> However, these citizens took to the streets to ensure that official policies were made in the sunshine, by a cross section of the concerned public.

These activists had a great influence on public policy in the 1960s and 1970s. Ralph Nader provides a good example. Nader built on tactics learned in the civil rights and environmental movements: combining public education, peaceful confrontation, sound science, and shrewd public relations. These tactics would also characterize his response to trade policy in the decades that followed, when he would attempt to raise public concern about trade agreements in the United States and abroad.<sup>11</sup>

In the 1960s, however, Nader focused on the misdeeds of U.S. big business. His book, *Unsafe at Any Speed* struck a raw nerve. America was car country; Americans valued their car as an investment, as testimony to their standard of living, and as transportation. However, many Americans were shocked to learn about how unsafe some cars were. When General Motors tried to discredit the messenger, Nader gained even greater credibility as an advocate of consumer safety and business accountability. He sued General Motors and used his winnings to finance a new kind of public interest group designed to research and develop strategies as to what citizens could do to make government and corporations more accountable. (His affiliate, Public Citizen, would play a leading role in criticizing trade agreements fifteen years hence.) Public interest research groups and human rights, environmental, labor, and consumer groups, among others, demanded that government intervene in new ways and in different areas. In the next ten years, the United States began to regulate discrimination (a human rights and labor rights violation), the environment, human health, and the workplace. These regulations also gave consumers, citizens, and workers new legal rights to challenge business.<sup>12</sup>

Many of these regulations (such as environmental regulation) were very popular with the public.<sup>13</sup> Some opened up new opportunities for more Americans; others improved working conditions, the environment, and human rights. However, because these regulations came with costs to taxpayers and producers, they weren't very popular with executives. Business leaders often tried to pass on these costs to consumers.

The United States was not alone in this trend of using government to regulate the environment, the market, and the workplace.<sup>14</sup> Other nations such as Germany, Denmark, Canada, and Japan also took on new and expanded responsibilities to protect consumers, workers, and the environment. Most of these social regulations were not designed to distort trade, but sometimes without deliberate intent, they may have had a trade distorting effect. For example, the 1966 Fair Packaging and Labeling Act required producers to state what a package contains, how much it contains, and who made the product. Both foreign and domestic producers would have had to hire engineers to redesign the package to include such information, but foreign companies would also have to hire translators to write this information in English. By clearly stating where the product was made and by whom, consumers would find it easier to buy American, if they so chose. Thus, although such requirements would raise initial costs for all producers, these costs may have

been higher for foreign producers. Moreover, domestic companies might be able to respond more quickly or more efficiently to such regulations and amortize these costs.

These social regulations were put in place at the same time that many nations, including the United States, were increasingly relying on NTBs to protect. Thus, without intent, these social regulations may have *appeared* protectionist in intent and in effect. Yet some of these regulations may have been designed with a secondary goal of protection. For example, the 1966 Traffic Safety Act, inspired by Ralph Nader, delineated safety standards for motor vehicles. Although it clearly had a consumer protective rationale, some foreign governments and producers perceived that it was written in such a way that U.S. car makers would find it easier to comply with.<sup>15</sup>

Such social regulations proliferated at a time when imports were rising and producers demanded protection. U.S. consumers were increasingly attracted to imports because they were often well made and cheaper than U.S.-made goods. In some instances, U.S. goods were more expensive due to inflation.

America's inflation problem was caused by poor macroeconomic management. Taxpayers supported President Lyndon Baines Johnson's Great Society Programs (such as Head Start, VISTA, Medicare, and the National Endowment for the Arts) as well the Vietnam War, and this massive spending led to inflationary pressures. After 1967, inflation made imports more attractive. By 1970, Americans had the pleasure of coping with stagflation: inflation coupled with recession. The U.S. trade balance (the surplus of dollars spent on exports over imports) was \$6 billion in 1964; by 1971, it had turned negative, to -\$1.3 billion. By 1979, the trade deficit was -\$24 billion.<sup>16</sup> Not surprisingly, more Americans raised their voices in support of protectionism. They could argue that protectionist policies put Americans first and came at no direct cost to the taxpayer. This was certainly true when Americans asked for traditional modes of protection such as tariffs or quotas. But the GATT limited policymakers' ability to use traditional protectionist tools. U.S. policymakers began to recognize that NTBs such as health and safety standards might serve dual purposes: to regulate domestic markets and allow policymakers to covertly protect.

Many of the advocates of such social regulation did not envision these regulations as multipurpose tools. They paid little attention to trade policy, except to note how it benefited big business leaders. Moreover, trade policy was relatively closed to their involvement. Anyone, if they paid their way to Washington, could testify during congressional

debates on trade or meet with administration policymakers. However, in this period, trade policy was developed by a small circle of elites in government, with advice from leaders from business, labor, academia, and agriculture. Environmentalists, consumer activists, and human rights activists were not part of that inner circle. Citizen activists did not foresee that some of the social regulations that they had just helped erect might be viewed not just as tools to correct market failures, but also as tools to distort trade.<sup>17</sup>

#### ON THE TRAIL OF NONTARIFF BARRIERS

As noted in chapter 2, the United States had long taken the position that nations should use overt border measures such as tariffs to protect. This was a key reason why the United States pushed for a comprehensive multilateral trade agreement to govern how nations used protectionist measures (the GATT). But the GATT did not regulate many types of NTBs. In 1956, the United States persuaded Japan to voluntarily restrain its exports of cotton textiles to the United States, and soon Great Britain announced a similar agreement with Hong Kong. These measures were gradually followed by an international quota arrangement on fibers (the Multi-fiber agreement), and special NTB protection for footwear, steel, and autos.<sup>18</sup>

Although U.S. trade policymakers pressed for rules to govern such NTBs, they also began to use them. U.S. trade with Canada provides a good example. In the 1960s, the two nations were each other's most important trading partners. In a 1963 study, the Canadian American Committee (a business/academic study group under the aegis of the National Planning Association) found that each nation had a panoply of regulations, administrative fiats, vague or unduly stringent standards for health and quarantines, and special protective devices that distorted trade. The authors of the study noted that the revival of vigorous overseas competition had led "high-tariff interests" to press policymakers to use NTBs to protect: "The restrictive potential of nontariff trading regulations makes them an appealing means of retreat from tariff commitments."<sup>19</sup> Some of these NTBs included social regulations.

Unelected policymakers in both countries were now using NTBs to protect, often without informing their citizens that they were using these measures as tools of protection. These same policymakers would have had to gain legislative approval to use tariffs or raise tariff levels.<sup>20</sup> Nor were these NTBs erected in a transparent manner. According to

the Canadian American Committee, tariff changes are “major governmental undertakings, often attended by months of public hearings and discussion.” But as “the system of administrative controls spreads its intricate network over the foreign trade of Canada and the United States, it attracts much less attention . . . is rarely debated in Congress or Parliament or discussed by women’s clubs or businessmen’s forums.”<sup>21</sup> Policymakers could protect without appearing to be protectionist. While most citizen activists seemed unaware of this trend, it upset some executives.

Policymakers and business leaders were not just worried about the undemocratic use of these NTBs in the United States and Canada; they worried about their proliferation around the world.<sup>22</sup> During the Kennedy Round negotiations, many European governments asked the United States to negotiate NTBs. Congress, surprised by these negotiations, tried to curtail them. But in the interest of reaching an international agreement, U.S. negotiators pressed on. They signed an antidumping code and agreed to relinquish a system of special tariffs applied to certain imports of chemicals used to make dyes, plastics, perfumes, and other products.<sup>23</sup> When members of Congress found out about these agreements, they balked. On June 28, 1966, the Senate issued Concurrent Resolution 100 expressing the sense of Congress that “in connection with the negotiations to carry out the Trade Expansion Act of 1962 no agreement . . . should be entered into except in accordance with legislative authority delegated by the Congress.”<sup>24</sup> Although Congress approved the results of the Kennedy Round and became a signatory of the antidumping code, it refused to change its laws related to dumping. Thus, U.S. adherence to the code was moot. Congressional intent was clear: Only Congress could authorize such NTB negotiations.

However, by the late 1960s, Congress was in a bind. Members recognized that important constituents (such as influential business leaders) believed that the use of NTBs must be regulated internationally by a common set of rules. But to achieve that goal, Congress would have to grant the president new authority to negotiate trade agreements. If these negotiations succeeded, Congress might have to change U.S. law and regulatory practices. Congress did not want to do that. Consequently, Congress could not come to a consensus as to what to do. President Lyndon Johnson, who had great success at pushing his social agenda through Congress, could not get trade negotiating authority in 1968; his trade bill was not even reported out of the House Ways and Means Committee.<sup>25</sup>

CATALOGING NONTARIFF TRADE BARRIERS

Nonetheless, some members of Congress understood that since trade policy was their bailiwick as well as the president's, they must find a solution to resolve the growing issue of NTB proliferation. If they wanted to negotiate the reduction of these NTBs, they must debate how to grant the president such new authority. Congressman Hale Boggs saw opportunity in this dilemma. In July 1967, his Subcommittee on Foreign Economic Policy of the Joint Economic Committee sponsored a series of hearings. They reviewed the Kennedy Round results and listened to government officials and business leaders from Italy, Great Britain, and the United States. Boggs seemed to be trying to prepare his colleagues for a much broader trade debate. "Trade policy touches many other policy issues, political as well as economic; it should not be dealt with as though it were entirely in a separate compartment."<sup>26</sup> Boggs understood that once national issues were now international issues, such as human rights, consumer safety, or antitrust policies.<sup>27</sup> But most of his counterparts did not share this larger perspective.

While Congress debated the Kennedy Round, Boggs's committee focused on what to do about NTB proliferation. The appendix to the 1967 Subcommittee on Foreign Economic Policy hearings included a forty-two page list of NTBs used by major U.S. trading partners. It also included a 1962 study by lawyer Noel Hemmendinger on U.S. NTBs. Hemmendinger showed that the United States was far from pure; it relied on quantitative restrictions, procurement laws (the Federal Buy American Act), labeling (country-of-origin marking), antidumping legislation, and customs practices.<sup>28</sup>

The committee did not take one lawyer's view as gospel but called on a wide range of experts to testify on the impact of these barriers. Joseph Greenwald of the State Department predicted "nontariff barriers are an important problem, and they will be more important as time goes on."<sup>29</sup> He and other government officials noted that how America handled its own NTBs would be a major test of American reliability and interest in trade liberalization. Only one man talked about how this process might affect America's system of social regulation. William Diebold of the Council on Foreign Relations warned that there are many barriers "in which the trade barrier effect is incidental to the pursuit of some other objective perhaps. Such a matter as health or safety. We are now seeing international discussions about the automobile safety arrangements which have to be adopted in this country, because they cause problems for foreign producers."<sup>30</sup> Diebold reminded Con-

gress that it was more expensive for foreign producers to comply with America's increasingly diverse and complex system of regulation. Thus, he warned the Congress should not be surprised that America's trade partners saw many such regulations as covertly "protectionist." Mr. Kenneth Younger, director of Britain's Royal Institute of International Affairs, took a different point of view. He testified that the only way for the GATT to find common ground on NTB negotiations would be for the GATT's contracting parties to negotiate economic union.<sup>31</sup>

Clearly, the experts were divided as to what to do about the proliferation of NTBs as tools to protect. According to Mr. Greenwald, "When you come to nontariff barriers, you get involved in purely national legislation, tax systems, fiscal systems, and it gets extremely complicated. They are related to national economic policies that aren't adopted purely in terms of international trade."<sup>32</sup> To Greenwald, it was an issue of governance. But to economist Robert Baldwin, it was simply an issue of harmonizing regulations: "It is important to . . . establish clear-cut rules that do not discriminate against foreigners in cases where the national interest is not involved."<sup>33</sup> This issue would not be settled in the years that followed.

The 1967 hearings did not assuage the concerns of executives, government officials, and academics about the spread of NTBs. Thus, they sought to spearhead an international consensus about what to do. In 1969, the Committee on Economic Development (CED), a business-study group, coauthored a review of nontariff distortions of trade with its British, European, Australian, and Swedish counterparts. On health and safety standards, they noted, "Products may well be declared noxious in one country and perfectly safe in others. . . . The main issue in this field should therefore be an international harmonization of the regulations. . . . Governments should agree to investigate thoroughly existing foreign regulations before initiating new laws in the field of public health and safety."<sup>34</sup> Although this solution sounded logical, it ignored differences of culture, science, and politics among nations. Most governments and their citizens would not find it acceptable.

Trade officials thought that Congress might be pushed into action if its members had a better understanding of these NTBs. The Special Trade Representative compiled a short list from a survey of U.S. industry. In 1967, the GATT decided to draw up its own inventory, based on notifications submitted by its member governments. By 1971, the inventory consisted of eight hundred separate items. The Department of Commerce noted that the House Ways and Means Committee found such NTBs in sixty-nine nations as well as in the United States.

But knowing which nations used NTBs was not the same as knowing how to tackle them. As official William B. Kelly of the Department of State noted, “The Congress now enjoys the luxury of berating the Administration for not doing more to eliminate foreign NTBs without assuming the necessary responsibility for NTB negotiations.”<sup>35</sup>

SOCIAL ISSUES AND TRADE:  
LABOR AND HUMAN RIGHTS

The growing use of NTBs was not the only problem that could thwart future agreement on trade. Congress was also concerned about American workers and wanted trade agreements to reflect these worries. U.S. workers competed not only with less productive foreign counterparts but also with foreign workers who toiled in unfair working conditions. In 1967, the House Education and Labor Committee marked up a bill (H.R. 478) amending the Fair Labor Standards Act of 1938, giving the president permission to restrict imports if the secretary of labor found that imported goods from low-wage areas impaired or threatened to impair the standard of living of domestic workers or the economic welfare of communities. Congress passed the bill in 1967, but the legislation allowed the president to approve or reject its recommendations. It was without teeth, but as historian Alfred Eckes notes, it allowed Congress to show its dissatisfaction about America’s growing reliance on imported goods.<sup>36</sup> Neither Johnson nor Richard M. Nixon, a Republican who became president on January 20, 1969, was likely to act on this bill. Although Nixon sponsored workplace safety and environmental legislation, he was less concerned about voter welfare than voter employment.<sup>37</sup> The bill never became law.

Congress’s focus on labor rights may have encouraged a focus on human rights overseas.<sup>38</sup> Throughout the 1960s, Congress had debated the costs and benefits of improving trade relations with the Soviet bloc.<sup>39</sup> However, a growing number of Americans—Jews as well as gentiles—became increasingly concerned about human rights conditions in the Soviet Union and several of its satellite nations. The Soviets said that they denied their citizens emigration rights because they wanted to encourage assimilation among their national minorities. But in 1968, the Soviet Union began to permit some Jews to leave at a heady price: an education tax. In 1970, only a thousand were allowed out, but in 1971, almost thirteen thousand Jews were allowed to emigrate to Israel or other nations. This tax and the ambiguity of Soviet emigration policy infuriated some Americans. In 1970 and 1971, the Jewish Defense League (modeled after

the Black Panthers) attempted to embarrass the American, Israeli, Soviet, and American Jewish establishments about the plight of these Jews. Some Jewish leaders talked about using trade policy as leverage to achieve human rights improvement in the Soviet bloc.<sup>40</sup>

In 1971, the National Center for Jewish Policy Studies developed legislation to tie Soviet concessions on emigration to U.S. trade privileges. This group was influenced by the work and tactics of Ralph Nader. Like Nader's affiliated organizations, it used both confrontational (protests) and traditional tactics to achieve its goals. This approach would gain the devoted leadership of two influential members of Congress, Senator Henry Jackson of Washington and Representative Charles A. Vanik of Ohio. This was not the first time human rights and trade were linked or the first time Jewish groups had tried to change trade policies with Russia; in 1912, Jewish pressure forced the abrogation of a commercial treaty with Russia.<sup>41</sup> But it was the first time that a special interest group trying to achieve social policy goals (emigration) linked with a special interest group widely perceived as protectionist (the AFL) to alter U.S. trade policy. This led some policymakers to see these human rights activists as protectionist, too.

By the early 1970s, Congress seemed increasingly receptive to protectionist rhetoric and demands. First, although trade was increasingly important to the health of the economy, imported goods were increasing faster than exports. In 1960, the United States imported \$14 billion of goods and exported \$19 billion; by 1970, imports were \$39 billion (almost a threefold increase), while exports were \$42 billion (an increase of 2 1/4). By 1979, the United States imported \$212 billion worth of goods while exporting some \$184 billion. Much of this increase can be accounted for by the increased inflation and higher price of oil after 1973.<sup>42</sup> Second, support for the cold war paradigm—that economic internationalism could thwart the spread of communist regimes overseas—was breaking down. Sector-specific protection designed for import-besieged sectors such as textiles, shoes, and watches did not provide permanent solutions to their problems, although they came at no cost to the taxpayer. A growing number of workers and the union officials that represented them were increasingly disappointed with the on-budget programs designed to cushion workers from the costs of trade liberalization.<sup>43</sup> Thus, they argued for protection. After all, legislators could provide such special assistance without directly alienating most taxpayers. Protection was generally off-budget.

Third, as economist Anne Krueger has noted, trade became more important to the U.S. economy at the same time that trade policymakers

were increasingly susceptible to special interest pressures. For example, after the 1960s, the State Department, which took a broad internationalist perspective, played less of a role in making trade policy than other departments, such as the Department of Agriculture, that had large special interest constituencies. At the same time, members of Congress felt increasingly pressured to act on behalf of their constituents.<sup>44</sup> Not surprisingly, policymakers developed new rationales to justify their support for protection. For example, Republican/libertarian leader Barry Goldwater stressed that he believed in *laissez-faire*, but since other nations did not play by the rules of American capitalism, the United States was justified in protecting its weaker producers.<sup>45</sup> America's most famous libertarian was arguing that protectionism was essentially an appropriate response to unfair trade. Other members argued that because other nations did not really reduce their tariff barriers as much as the United States in the rounds of trade liberalization, the United States should not continue to dramatically reduce its barriers.<sup>46</sup> Senator Everett Dirksen of Illinois noted that "foreign-produced goods have prospered in our markets. But foreign markets have not reciprocally responded to our products of America's mines, farms, forests and industries." Thus, he was arguing the protectionism was justified because American producers had not obtained similar market share results overseas.<sup>47</sup>

Finally, protectionism was bolstered because it had become more creative. According to economist Robert Baldwin, tariff cuts achieved in the Kennedy Round (some 35 percent for Japan, the United States, the United Kingdom, and the European Community) "have revealed more clearly than before the host of other devices tending to reduce the benefits of international trade. . . . Consequently . . . many people . . . want governments to turn their attention to this neglected aspect." He was talking about NTBs.<sup>48</sup>

Procurement regulations provide a good example of how these rules could distort trade. For example, the United States had become an active user of "Buy America" provisions—laws or regulations requiring that certain categories of goods purchased by the government had to be produced domestically. The United States also relied on voluntary export restraints where the exporting nation voluntarily inhibited its exports instead of the importing nation applying a quota.<sup>49</sup> This was creative protectionism.

Creative protectionism, however, could not solve America's macroeconomic problems. As noted earlier, in the second half of the 1960s, policymakers struggled to provide both guns and butter, and consequently Americans suffered through inflation. Logically, the real value

of the dollar should have declined. But under the global monetary system, most of the world's currencies were linked to gold or the U.S. dollar. The dollar was not allowed to reach its real (lower) market value.<sup>50</sup> The high value of the dollar hurt American exports and American economic growth. As the elephant sneezed, many other nations suffered.

NIXON'S WILLIAMS COMMISSION  
AND NEW APPROACHES TO TRADE

In 1970, President Nixon sought flexible economic policy solutions for trade. In a letter transmitting his trade legislation, he asked Congress for "a clear statement of Congressional intent" for negotiating NTBs. Nixon admitted he had no authority to negotiate these barriers and that his request could be perceived as a threat to democracy as well as the constitutional separation of powers (something he would soon be concerned with).<sup>51</sup> But as in 1969, he failed to get Congress to agree to a new round of trade negotiations.<sup>52</sup> So in the Washington manner, he called on a commission of experts to advise him on the direction of economic policy, to "take full account of the changes on the world economic scene." This commission, the Williams Commission, was chaired by a senior executive of IBM, one of America's largest multinational corporations. Although its purview touched on a wide range of regulations of concern to workers, environmentalists, and others, its membership did not include environmentalists, religious leaders, or community leaders. Instead it was composed of academics, business and labor leaders, and one farm leader, the same individuals and groups that had typically debated trade policy.<sup>53</sup>

The Williams Commission reported "a growing concern . . . that the United States has not received full value for the tariff concessions . . . because foreign countries have found other ways . . . of impeding our access to their market." According to the commission, Americans suffered from a "crisis of confidence," due to a decline in America's comparative advantage and technological lead.<sup>54</sup> As a result, the United States was relying on NTBs, although "a further proliferation of NTBs would be likely to weaken the . . . GATT."<sup>55</sup>

Commission members studied the diversity of NTBs used in the United States and around the world. They were especially concerned about health and safety regulations such as those recently enhanced in the United States. Commission members noted that regulations or standards might not be protectionist in intent but might be enforced in a manner that could distort trade. The commission cited, as an example,

municipal building codes that effectively banned the use of imported steel in urban skyscrapers. Because foreign steel producers may not be aware of these standards, the steel they produce may not meet local codes, thwarting foreign sales in the United States.<sup>56</sup> The commission also noted that the United States and other nations had regulations affecting boilers and pressure vessels, plumbing, firefighting, and electrical equipment. The commission was so concerned about the use of such health and safety standards as NTBs that they delineated them in several pages of charts.<sup>57</sup>

The commission concluded that comprehensive trade negotiation could both encourage economic growth as well as reduce the trade distortions of NTBs. But the Williams Commission was unclear as to what these negotiations should achieve. For example, they did not determine whether international environmental regulations should be harmonized, given that they recognized that “setting the level of acceptable pollution is largely a domestic decision.”<sup>58</sup> The commission seemed to be saying that many U.S. social regulations were a “comparative disadvantage”<sup>59</sup> to American exports; because they increased producer costs. But they also noted that such regulations impeded foreign exports to the United States. The message was contradictory; and it did not address whether trade barriers would make good environmental policies or whether proper environmental policies could raise welfare and expand trade.

Interestingly, although the Williams Commission gave a confusing message on the environment, it did call for nations to agree on a core set of labor standards. The Commission noted that international acceptance of core labor standards (such as the right to organize and collectively bargain) could increase political support for multilateral trade liberalization in the United States. The United States should support a multilateral effort to “gain international acceptance of a code of fair labor standards which would include . . . realistic means for enforcing the code.”<sup>60</sup>

BURKE-HARTKE AND THE  
TRADE REFORM ACT OF 1973

The Williams Commission could have given President Richard Nixon political cover to take bold international action, but Nixon ignored the Commission’s recommendations. Nixon’s economic advisers, however, would not let him ignore the international sources of some of America’s economic problems. In 1971, some Americans saw economic decline

when the United States had its first trade deficit since 1893. That year, Nixon allowed Treasury Secretary John Connolly to devalue the dollar, but this strategy did not ease inflationary pressures. Meanwhile, Nixon kept the lid on inflation through wage and price controls. When these controls were lifted, inflation took off. In March 1973, Treasury Secretary George Schultz effectively forced the rest of the world to accept floating exchange rates.<sup>61</sup>

Some members of Congress had more radical ideas about America's international economic policies. In 1972, Congressman James Burke (D-Massachusetts) and Senator Vance Hartke (D-Indiana) introduced the Foreign Trade and Investment Act (Burke-Hartke).<sup>62</sup> The bill was rooted in the idea that multinationals had shipped jobs overseas, and thereby eroded the U.S. industrial base. It called for quotas "for virtually all imports that competed with U.S. production." This approach was extremely controversial. It would have contravened both the GATT system and the long-standing capitalist belief that, in general, markets and not policymakers should decide how goods and services are provided.<sup>63</sup>

The bill reflected growing concern about America's growing dependence on imports as well as the impact of imports upon the health of American producers (see the following chart). For example, from the 1950s until the mid-1960s, unionized labor supported trade liberalization, in the belief that trade encouraged new jobs and economic growth and thwarted the spread of communism.<sup>64</sup> Workers and sectors that were injured by imports could demand and sometimes receive protection.

But as imports increased, and unemployment for blue-collar workers increased from 3.9 percent in 1969 to 6.3 percent in 1970, many workers and union leaders concluded that their jobs were going overseas (or down

*Imports Share of the U.S. Market in 1970*

*U.S. Ratio of Imports to Consumption by Value (or by Volume [\*])*

<b>Product</b>	<b>Percent</b>
Textiles	12
Flatware	22
Leather gloves	30
Footwear (nonrubber)	30
Black and white TVs	52*
Radios	70*
35-mm still cameras	100*

*Source:* Peter G. Peterson, *The United States in the Changing World Economy*, Vol. II. *Background Material* (Washington: GPO, 1971), Chart 26.

south to Mexico). Whether they were right or wrong, or whether trade or technological change was to blame for this job loss, union members and leaders recognized these arguments played well on Capitol Hill. Moreover, they understood that Congress would never appropriate enough money to help unemployed workers. So they called for the federal government to provide the time-tested, off-budget remedy, protection.<sup>65</sup>

Although Burke-Hartke did not pass the Congress, it marked a turning point in how Americans conceived and talked about trade agreements. During the discussion of the bill, it again became acceptable for policymakers to divide trade into two categories, fair and unfair. Certain nations were consistently described as unfair traders; they included Japan, other Asian economies, and of course the Soviet Union and its satellites.<sup>66</sup> Burke-Hartke was also noteworthy because it was the first time Congress tried to regulate the behavior of multinational corporations across borders. Thus, the bill aroused U.S. multinationals from their passivity; their executives worked harder to defend trade liberalization with words as well as dollars.<sup>67</sup> Finally, the bill helped set the tone for and raised the visibility of future trade debates. As trade grew more important to the American economy, a wide range of interest groups came to understand that they had something at stake in the debate over trade policy.

#### CONTEXT IS EVERYTHING

As members of Congress debated what approach to take on foreign economic policy, domestic economic conditions got worse. In late 1973, the OPEC (the Organization of Petroleum Exporting Countries) oil embargo and rising oil prices led to massive layoffs in the automobile industry and then in other sectors as well. Companies found it hard to adjust to rising energy prices. According to economist David Calleo, rising food and petroleum prices led to a collapse in demand—and eventually recession and unemployment. The American public was also finding this inflation difficult to live with. In 1973, the Consumer Price Index (a government measure of inflation) rose by some 8.4 percent. By the first quarter of 1974, it had spurted to 12.3 percent. Not surprisingly, 62 percent of those polled by Gallup in 1973 thought inflation was the most important problem facing the country.<sup>68</sup>

President Nixon hoped that inflation could be conquered by reducing government spending. He proposed a budget to starve the welfare state by terminating price supports as well as programs (such as Head Start, VISTA, Medicare, and the National Endowments for the

Arts and Humanities). Congress did not concur and moved to reenact appropriations that the president had pocket vetoed or impounded.<sup>69</sup> Nixon's budget-cutting threats were mainly rhetorical, but he had sent a message: He was willing to reduce government's role in the economy.

Nixon also wanted a big foreign policy coup to distract the public from economic problems: a trade agreement with the Soviet Union to cement his program of *détente* (cooperation with the Soviets). Nixon had helped gain farm support for closer ties by encouraging massive food sales to Russia, and he foresaw an important market in China, too.<sup>70</sup> He could not achieve these goals without congressional approval. On behalf of President Nixon, Democratic Ways and Means Chair Wilbur Mills introduced H.R. 6767 on April 10, 1973. This bill called for much more than normal trade relations with America's cold war nemesis. Nixon again wanted congressional permission to negotiate NTBs. If these negotiations were successful, they might require changes in U.S. regulations or legislation. Understandably, Nixon's request was controversial. In a written statement, his chief trade negotiator, Special Trade Representative William Eberle noted, "The Administration attaches a great deal of importance to the reduction of trade barriers other than tariffs." The administration needed flexibility because "there is no single negotiating approach for seeking multilateral solutions."<sup>71</sup>

However, in the case of legislation, timing is everything and the president's timing for this bill was terrible. On April 8, John Dean, the president's White House counsel, met with federal prosecutors and revealed what he knew about White House involvement in the burglary of Democratic national headquarters at the Watergate apartment complex in June 1972, and its subsequent cover-up. (This burglary was also an undercover attempt to install bugging devices in the telephones of Democrats.) As the cover-up continued and then cracked, America plunged into a major constitutional crisis. In the months that followed, television and radio recorded the deliberations of the House Judiciary Committee as it weighed the impeachment of the president.<sup>72</sup> Thus the president's request for new authority must be viewed in the context of his attempt to dismantle many government programs and the constitutional crisis. It occurred in a climate of growing distrust of government and dismay that government could not solve America's economic problems. It also came at a moment when Americans increasingly questioned the benefits of trade agreements.<sup>73</sup> Finally, it came at a scary time in the world. On October 6, 1973, the Yom Kippur war broke out; Israel was at war with most of the Middle Eastern nations. The United

States was Israel's most important ally while the Soviets were the most important suppliers and allies to many of Israel's enemies. As Secretary of State Henry Kissinger attempted to broker a peace deal, he argued that a trade agreement with the Russians should be clean. If the Congress linked trade benefits to emigration, it could undercut his efforts to gain Soviet support for a cease-fire.<sup>74</sup>

But some members of the House saw these problems as a bargaining chip to achieve their policy goals. They argued that if Nixon wanted to totally change the paradigm for foreign policy (*détente*) at a time of such flux, members of Congress wanted the model for trade to change as well. They did not want to repeat past mistakes, when, as Congressman Collier noted, "we gave the executive a blank check. . . . Congress . . . extricated itself from maintaining any relationship with what we were negotiating."<sup>75</sup> That was a mistake that Congress would not longer perpetuate. But the members did not agree on how to grant the president greater authority to negotiate the panoply of tariff and NTB barriers to trade while maintaining traditional control over the legislative process.

The House hearings on the president's bill were rancorous, detailed, and focused on this new grant of authority. The president's men made their case in conciliatory tones. According to Ambassador William R. Pearce, deputy special representative for trade negotiations, "we can't ask you for an advance grant of authority to do away with NTBs; in most cases they are linked in very subtle ways to all sorts of domestic legislation. . . . Even if you are willing to give us that authority, it is doubtful that it would be constitutional." Thus the executive branch seemed to believe that its request for NTB negotiating authority was moderate and limited in scope.<sup>76</sup>

But members of Congress did not concur. They were concerned not only about granting such authority but about its broader implications for the American polity. While Congressman Al Ullman worried about the constitutionality of the request, Congressman Charles Vanik worried about federalism and asked whether trade agreements and implementing legislation can override state laws constituting NTBs.<sup>77</sup> Congressman Robert F. Drinan worried the proposed bill did not set "a rule, a measuring stick by which it can be determined whether the President is or is not complying with congressional policy." Congressman Peter Frelinghuysen also expressed grave worries about negotiations on "the elusive realm of nontariff barriers. . . . These impediments to trade are so inextricably intertwined in a web of domestic social, economic and political considerations that Congress would benefit by knowing what the executive branch has in mind before they enter into negotiations." Congressman James F.

Burke stressed that “we are giving the president powers he never had before . . . at a time when the climate in this country is such that the public are questioning us on whether or not we should give the president any further powers. . . . Let’s hope we are not around here locking the door after they steal the horse.”<sup>78</sup> Interestingly, supporters of multilateral trade liberalization such as the American Importers Association and the Committee for National Trade Policy echoed these concerns.<sup>79</sup>

Members were particularly interested in how granting such authority might affect health and safety standards at the federal, state, and local levels.<sup>80</sup> Congressman Corman wondered whether Oregon’s law prohibiting the importation of beverages in nonreturnable containers could be negotiated away by the president. Secretary of Commerce Fred Dent surmised that the president could, in effect, negotiate away such a provision. Congressman Corman also worried that “Buy American” laws could be negotiated away.<sup>81</sup> Congressman Charles Vanik asked the General Accounting Office (GAO) how a grant of such authority might affect environmental protection laws such as those protecting endangered species. The GAO, a Congressional agency, replied, “A President may not through trade negotiations overturn or change a duly enacted law, absent other authority of law. However . . . the President feels—and we agree—that the enactment of section 103 will grant him sufficient authority to allow him to enter into agreements which could, in effect, change domestic law. . . . Congress may lawfully authorize the President to abrogate certain provisions of law. . . . Whether the exercise of such authority by the President would raise a constitutional question would depend on the statute involved. . . . Eliminating certain nontariff barriers on imports might result in discriminating against domestic competitors and thus raise a constitutional question.”<sup>82</sup>

Congressman Vanik also wondered if the proliferation of environmental protection or food safety regulations would lead to more trade disputes with America’s trading partners.<sup>83</sup> Only one witness echoed these concerns. Wayne Hawkins of the Florida Fruit and Vegetable Association noted, “The American consumer cannot determine different cultural practices distinguishing the types of fertilizer, spray materials, or packinghouse conditions.” He stressed that U.S. customs inspections were inadequate to protect consumers from eating imported food sprayed with pesticides banned in the United States.<sup>84</sup>

Congressman Vanik was concerned about consumer safety (which is improved by regulation) as well as consumer welfare (which is often improved by trade liberalization). He called for an “escape clause . . . that would assure the rights of the consumer will not be transgressed

upon through any operation of this act.” But Agricultural Secretary Earl L. Butz refused to grant him that assurance, noting that “if the rights of the consumer become . . . unreasonable it may result in inadequate food supplies, higher prices.” He cited consumer concerns about the use of pesticides and growth hormones (DES used to fatten beef) as examples of such unreasonable concerns.<sup>85</sup> In his view, these pesticides or additives simply made it cheaper to produce food. Congressman Bill Archer of Texas (seconded by Congressman Wagner) took the increasingly popular view that America’s high regulations such as OSHA, EEOC, and EPA regulations make competition “unfair,” because other nations don’t have these many regulations and consequent high costs that American business must amortize.<sup>86</sup>

Most witnesses, however, were less concerned with the costs of complying with American regulatory standards than with minimizing the discriminatory impact of such regulations overseas. B. H. Jones, executive vice president of the National Livestock Feeders Association, stressed that NTBs were the principal restraint on agricultural trade. He noted that Germany required that its meat inspectors be located in the plants; thus, it was almost impossible to export to Germany. Jefferson Peyser of the Wine Institute noted that the European Community (EC) did not recognize many American grapes as wine grapes. As a result, U.S. wine producers could not sell California champagne or Bordeaux to Europeans as wine.<sup>87</sup>

The debate also revealed that Americans were increasingly divided as to how trade affects workers. Some members such as Congressman Duncan worried about “the exporting of low-wage rates to our country . . . through products manufactured in places like Taiwan and Korea and Japan by almost slave labor.”<sup>88</sup> Union leaders were also divided about future trade policy. While the United Auto Workers (UAW) and the International Leather Goods, Plastics and Novelty Workers’ Union called for international labor standards, Paul Jennings of the AFL-CIO opposed such labor standards because they were unenforceable without trade sanctions. The U.S. Catholic Conference called for such standards in concert with stronger unemployment assistance.<sup>89</sup> But Lazare Teper of the Garment Workers called this approach inadequate and too expensive.<sup>90</sup> I. W. Abel of the AFL-CIO called for a thorough revision to U.S. trade policy: “America needs an entire restructuring based on the recognition that the concept of free trade versus protectionism . . . is badly out of phase with the vastly changed world of the seventies.”<sup>91</sup> In contrast, Leonard Woodcock, president of the UAW, noted, “the

UAW still supports liberal international trade policy,” but he called for greater funding of “measures to protect workers and their families.”<sup>92</sup>

Many of the witnesses and members suggested that trade policies would be improved if trade policy-making became more democratic, by involving a broader cross section of Americans. They were especially concerned about ensuring broader participation in NTB negotiations.<sup>93</sup> The Emergency Committee for Foreign Trade (a leading supporter of trade liberalization) suggested “the President consider the views of the public” on NTBs, since the president must gain public views before entering in tariff negotiations.<sup>94</sup> But these suggestions got nowhere in 1973. Despite days (and thousands of pages) of debate, the House never acted on the president’s bill.

CONGRESS CRAFTS A COMPROMISE:  
THE TRADE ACT OF 1974 AND THE BIRTH  
OF FAST-TRACK

On October 3, 1973, the House put forward its own bill, H.R. 10710. This bill permitted the president to enter into NTB agreements only after consulting with the Committee on Ways and Means and the Committee on Finance. The bill proposed greater public involvement (creating the first advisory committees) and congressional involvement and oversight. The House passed the revised bill on December 11, 1973.<sup>95</sup> In its report on the act, the House Ways and Means Committee concluded that “this major legislation would . . . provide the President adequate . . . authority to achieve reciprocal reductions of both tariff and nontariff barriers, within constitutional limits and subject to Congressional surveillance. At the same time, it provides adequate safeguards for the rights of United States workers, industries, farmers, and consumers.”<sup>96</sup>

As the House found consensus, the Senate delayed its consideration of the bill. In closed deliberations, the Senate Finance Committee devoted some five months to dealing with NTBs. But political and economic conditions changed dramatically during this period. President Nixon resigned on August 9. After Gerald R. Ford took office, policy-makers were more concerned about the success of OPEC in raising oil prices than about future trade policy.<sup>97</sup>

The Senate decided that it was appropriate for the United States to encourage NTB negotiations but said that a NTB trade agreement could not “enter into force” unless the president submits two bills: a bill authorizing negotiations and an “implementing bill.” The implement-

ing bill must contain the following provisions: approval of the trade agreement; changes or additions to domestic law necessary to implement the agreement; and, in recognition that NTB negotiations could force changes to U.S. laws or regulations, a statement describing changes to administrative practice to implement the agreement. After these steps, Congress (by majority vote) must vote up or down on the bill within ninety days after the implementing bill (which could not be altered by Congress) was introduced. Finally, the special trade representative must continually consult with the Senate Finance Committee and House Ways and Means Committee on the negotiations. This approach became known as *fast-track*.<sup>98</sup> As part of this legislative package, the Finance Committee agreed “to refrain from the imposition of non-tariff barriers where such barriers are not currently imposed.”<sup>99</sup> These changes would give Congress more control and information to make good decisions about the ever broader turf that trade negotiations would cover, but it came with a price: limited congressional action during the negotiating process. That price would make the fast-track process as well as the content of trade agreement legislation controversial in the future. In 1974, rather than focusing on these issues, the Senate Hearings focused on a provision of the bill linking trade concessions to human rights, the Jackson-Vanik amendment.

#### THE DEBATE ON THE 1974 TRADE ACT

Hearings on H.R. 6767: House Hearings  
*Focused on president's unprecedented request for NTB authority*  
Over 400 witnesses, not including letters  
Government witnesses: 17

Hearings on H.R. 10710: Senate Hearings  
*Focused on emigration/trade link with the Soviet Union*  
Government witnesses: 6  
Public witnesses: over 171

The Senate hearings were shorter, but often as vociferous as those in the House. Traditional protectionists such as the Glass Workers Protective League and the steel industry testified in force against the Senate bill.<sup>100</sup> Some witnesses and members of Congress questioned the economic and political ideas underpinning American support of the GATT system. For example, Senator Hartke called for an international standardized wage because in the United States “the minimum wage limits the exploitation of human labor.”<sup>101</sup> But most senators recog-

nized that the United States could not force its standards on the rest of the world; nor did the United States want to accept the standards of other countries.

I. W. Abel, president of the United Steelworkers of America, AFL-CIO, claimed that managed economies and monopolistic industries had relegated comparative advantage “to the scrap heap.” Democratic Senator Ribicoff agreed that “the theory of comparative advantage certainly goes out the window.”<sup>102</sup> Howard D. Samuel of the Amalgamated Union noted that federal funds designed to cushion unemployment from trade had enticed liberals into supporting “unrestricted free trade.” But he urged liberals to find other solutions to reconcile trade and American social norms.<sup>103</sup>

The Senate debate did not spend much time developing such solutions, although some Americans had a lot to say about this problem. For example, the Florida Fruit and Vegetable Association wrote about the inconsistency between trade agreements and food safety standards. Mexico was the poster child nation for this debate. The association noted the ironies inherent in a study trip of some of its members to Mexico. The delegation members “were cautioned by the travel agency, the agricultural attache of the American embassy and others not to eat any fresh fruits or vegetables.” The writer wondered why Americans visiting Mexico are instructed not to eat their produce, but the United States “opens its borders freely to the same commodities so American consumers can purchase them without warning.” The writer reiterated concerns that Mexican vegetable imports had pesticides banned or untested in the United States. Ironically, however, the association noted that because “Mexico imposes very strict regulations on imports . . . it is impossible for Florida to ship fresh produce into Mexico.”<sup>104</sup>

This was not the only writer to argue that environmental regulation in the United States came with costs to American exporters. Scott C. Whitney, a law professor at the College of William and Mary and a partner in the law firm of Bechloeffler, Snapp, wrote that these costs were impeding the competitiveness of U.S. firms. His views were seconded by Cyanamid, a producer of products “for human, animal and plant health on a global basis.” In written testimony, Cyanamid called for harmonization of international standards. Until such harmonization, Cyanamid called for Congress to make allowances “to bring about comparative equity between the foreign and domestic producers. . . . This will also encourage other countries to upgrade their own pollution control standards.”<sup>105</sup> Finally, Mr. Collins of the International Union of Electrical, Radio and Machine Workers complained about America’s

strong social contract: “Such things as the OSHA . . . that Congress has legislated for our benefit are not applicable” to Mexico. Thus, Mexico had become a magnet for U.S. jobs.<sup>106</sup>

The Senate debate focused on how trade sanctions and market access could be used to support American values overseas. President Nixon and his successor, President Gerald Ford, were committed to détente and consequently wanted a relatively clean trade bill without stringent standards linking U.S. market access to Soviet emigration policies. Their views were seconded by many liberals who were still in a cold war mind-set. These individuals saw trade as a tool to encourage a richer, more peaceful world and not a tool to make a better world. Finally, many big firms also wanted a clean bill because they hoped détente would yield millions of new consumers in these Communist countries.<sup>107</sup> However, many members of Congress in both houses wanted to link emigration rights to trade concessions. These strange bedfellows included Representatives Barry M. Goldwater Jr. (the noted conservative/libertarian) and Edward Koch (at the time known as a liberal), George Meany of the AFL-CIO, and Senator Henry (Scoop) Jackson. These members delayed consideration of the trade bill to ensure that they could achieve the linkages they wanted. But in this delay, some observers saw protectionist intent. They suspected that Jackson was doing Meany’s dirty work, delaying the bill for protectionist reasons, rather than trying to forge an acceptable compromise on linking trade and emigration policies. Ultimately, the Ford administration found a compromise that did not force the Soviets to adhere to strict public emigration rules. This allowed the trade bill to go forward. The Jackson-Vanik amendment, which linked such trade concessions to human rights enhancement, has governed trade with nonmarket economies ever since.<sup>108</sup>

Some witnesses warned against using trade concessions to influence the internal policies of other nations toward their own citizens. They feared that by linking trade policy to social goals, they might open up a Pandora’s box of requests. Trade policy could be hijacked by new special interest groups. During the Senate debate, other groups called for linking trade to other social policies. For example, the Society for Animal Protective Legislation wanted H.R. 10710 to be amended to require Soviet adherence to an additional moratorium of ten years on the commercial killing of whales to get normal trade privileges.<sup>109</sup>

Despite the many delays and complicated debate, both the House and Senate approved the Trade Act of 1974. The House voted 323–36 in

favor; the Senate, 72–4 in favor. On January 3, 1975, President Ford signed PL 93–618.<sup>110</sup> This would allow the United States, the world's largest market, to participate in the seventh round of trade negotiations under the GATT, the Tokyo Round. During these negotiations, America and her trading partners would negotiate some codes governing the use of some NTBs, including standards, subsidies, and procurement regulations. For example, the standards code was designed to ensure that technical regulations and standards are not prepared, adopted, or applied in such a way as to obstruct international trade.<sup>111</sup> These codes went into effect in the 1980s, and soon thereafter, activists such as Ralph Nader began to pay greater attention to trade policies.

AFTER MONTHS OF DEBATE colored by a constitutional crisis, high inflation, and ad hoc economic policies, Congress finally passed a trade bill. This bill was historic for many reasons. It granted extraordinary power to the executive branch to negotiate NTBs to trade, such as standards. Moreover, it gave such authority to the executive branch after the nation saw President Nixon dismantle many government programs. Finally, it came at a time of dismay that the federal government could not solve many of America's economic problems, such as stagflation.

But this bill was not only about the traditional turf of trade policy-makers, border measures such as tariffs or quotas. This bill had the potential to affect a wide range of domestic regulations and laws that shaped how goods and services were produced. If the president succeeded at negotiating global standards (e.g., product standards), U.S. laws or regulations might have to be changed. Ironically, although the legislation was designed to mitigate support for protection and protectionist use of NTBs, it would prove to be the impetus for a new generation of critics of trade agreements. These individuals, who included human rights advocates, environmentalists, and citizen and consumer rights advocates, would see deregulation of their national social compact in the GATT's attempt to address trade distortions of domestic regulations.

The bill was a first step in making trade policy more transparent, democratic, and more accountable. The circle of participants had grown larger to include, for example, human rights and religious leaders. The bill also broadened the involvement of Congress and business, agriculture, and labor advisers. However, the circle of participants was still relatively small, despite the growing importance of trade policy to the nation's economic and political health. Moreover, these changes could not guarantee that this expanded circle would develop more democratic or better trade policies.

Nevertheless, the bill made radical change to U.S. trade policy possible. By linking trade concessions to emigration (Jackson-Vanik), the Trade Act of 1974 explicitly made emigration/human rights achievement an acceptable goal for trade policy. Moreover, it also made the achievement of *results*, rather than solely the negotiation of *rules*, an acceptable strategy for trade policy. This would have important ramifications for trade policy in the 1980s.