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ADDRESS

TRADE BARRIERS - A THREAT TO NATIONAL UNITY

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by

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at

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Our forefathers believed that exclusive control by Congress of commerce among the several States made certain that such trade would not be obstructed by State barriers. But today we witness a growing tendency to erect what are, in substance, State tariff walls. State laws which make the marketing of goods more difficult or expensive have been steadily increasing in both number and variety. Between neighboring States discrimination and retaliation, rivalries and reprisals have flared up.

Under our Constitutional system today trade among the States may be embargoed, restricted, or regulated by any State in only two articles of commerce. These articles are intoxicating liquors and prison-made goods.

The Twenty-first Amendment to the Constitution, which repealed prohibition, provided that the transportation or importation into any State of intoxicating liquors, in violation of the laws of such State, is prohibited. Thus an exception was made to the generally exclusive power of Congress, and control of commerce between States in intoxicating liquors was handed back to the States of destination. The purpose, and I intend no criticism of it, was to protect each State from importations that would defeat its own policy of dealing with the moral and social problems incident to the liquor traffic.

The power thus given to protect their social policy many States turned, under pressure from local liquor interests, to the protection of home industry. Local beer is given an effective tariff protection by imposing higher sales taxes on out-of-State beer, or special license fees and restrictions are placed on those who sell it. The States thus discriminated against

have then responded with all of the weapons of modern tariff reprisal, such as retaliatory taxes and inspections and partial and complete embargoes. A beer war has involved many States and perverted the purpose of the amendment. Such legislation applied to intoxicating liquor, however, is quite properly sustained by the Supreme Court.

The other commodity subject to State regulation is prison-made goods. Congress chose not to exercise its own regulatory power directly to stop convict-made goods from moving in interstate commerce in competition with the products of free labor. Instead, in substance, it loaned its power of regulation to the States into which such goods were shipped. Congress accomplished, by statute, as to convict-made goods, about the same result as that accomplished by the Twenty-first Amendment as to liquor.

Convict-made goods are subject to the law of the State of destination as though they had not arrived in interstate commerce. Interstate transportation agencies must not transport convict-made goods into a State in violation of its law, and they must be plainly labeled. The Supreme Court held, and I think rightly, that this legislation is constitutional. The States, therefore, may forbid, or restrict, trade in convict-made goods, each in its own way.

Great mischief would follow any attempt to apply this technique to commerce generally. This method of regulation would impose a great number of conflicting standards and rules. This method is impractical, difficult of enforcement, and highly restrictive. It would mean that a farmer raising apples in Oregon or New York would be obliged to pack and

grade in accordance with the standards of each State to which he might ship. A manufacturer might find his product unlawful in various States, according to the labor statutes of the State to which the goods were consigned, even if he obeyed all laws of the State where the manufacturing was done.

The impracticability of such legislation appears when enforcement is considered. Only the State of destination is interested in the enforcement of the standard, but it would have no jurisdiction over the books or records or witnesses by which violation in the State of Oregon would be proved. And there is little reason to expect the State of manufacture to help enforce a statute intended to discriminate against itself and its citizens.

To aid enforcement, proponents of such legislation would require labeling of all goods to show the conditions of manufacture. But the simplest product often embodies resources and the skills of many states. An ingenious man took as an example a collar button, which included iron mined in Minnesota and nickel mined in the Congo, processed in Ohio with coke produced in Pennsylvania. The collar button is attached to a small piece of cardboard manufactured in the State of New York from pulpwood cut in Canada, and the finished article is assembled and packed in Illinois. Just how would you label this article so as to inform 48 states whether there had been a violation of the standards set up by their divergent and conflicting laws? The label on an automobile would be longer than the wheel base.

Any general use of the method applied to prison-made goods is not only impracticable but it could not help operating as a restraint upon commerce and a discouragement of trade. Such attempts by States to enforce their own standards upon incoming goods would be clearly unconstitutional in the absence of Congressional approval. Whether or not it be constitutional for the Congress to give such approval in a limited class of cases, any general abdication by the Congress to the States of its powers over interstate commerce would frustrate the basic purpose of the commerce clause and abandon one of the fundamental advantages of our constitutional federation.

Many States, however, for local interests, are attempting by subtle and indirect means to apply discriminations to other commerce where they have neither the social nor legal justifications that apply to liquor and prison-made goods.

Many of the States have attempted from time to time to regulate railroad rates with an eye to giving advantage to local interests. In 1934 the Federal Coordinator of Transportation, Eastman, said of this tendency, "It has tended to provincialize railroads and to discourage national unity of action." The Federal Congress was obliged to give the Interstate Commerce Commission express power to restrain rates which were unduly advantageous or preferential to local interests to the prejudice of interstate commerce.

With the resort to motor transportation the technique of discrimination has been applied through registration fees and taxes, through the regulation of weights and size and equipment and through what are called

"port of entry" laws. These regulations are often designed to be discriminatory. Some of them have been removed by reciprocal agreements between the States, and some of them will perhaps be eliminated by the Federal Motor Carrier Act.

These discriminating regulations have caused what are described as "border wars" between States, some of which have smoldered for years with occasional violent outbreaks and some of which have flared up for a few days and then died out completely. Some of them have involved harassment, by State officials, of foreign motor carriers. The Secretary of Agriculture has reported 13 of these "border wars" in which the powers of the States were used either to discriminate against foreign motor carriers or in retaliation for such discrimination, with serious economic loss. Under the so-called port of entry legislation, some States have set up checking stations where incoming, and in some cases outgoing, traffic is halted in order to check up as to equipment, inspections, and taxes. Such a system is more than faintly reminiscent of the intolerable halting and examination which one encounters at every border of a state or municipality in Europe, and which has done so much to disintegrate European economy and bedevil European good will.

There has been a tremendous growth in the last twenty-five years of legislation affecting the marketing of agricultural products and dealing with grading, packaging, and labeling. No one will question that both State and Federal power should be exerted to prevent adulteration, to establish fair standards for grading, and to require honest labeling of goods.

But this purpose is sometimes departed from and a multitude of conflicting standards and annoyances and hindrances to trade in agricultural products are enacted for the motive of effecting a State tariff law.

In the interests of a legitimate development of proper safeguard to public health and honest commerce, there is urgent need for agreement between the States as to uniform standards for grading and packaging and marking and labeling of goods and for cooperation with the Federal Government in adopting standards which can also be applied to interstate commerce.

Likewise, the power of quarantine, so useful and wholesome to restrain the spread of disease and pest, has frequently been so applied as to restrain, for tariff purposes, the exchange of products between different parts of the United States and to cause heavy losses, particularly to agriculture.

Another indication of provincialism has been the State-financed advertising of local products, which in many cases has degenerated from a "buy-at-home" movement to a thinly veiled boycott of out-of-the-State products.

In citing these examples of barriers that are being raised by ourselves against ourselves, the purpose is not to criticize use of the power of the State to promote the health and living standards of its people. One of the difficulties with this problem arises from the fact that nearly all of the powers involved may be used for legitimate purposes. Its menace consists in its perversion. The purpose to discriminate rarely appears on the face of such legislation. It often appears only in its administration and application. What we condemn is the framing of any State legislation

from a parochial economic motive or enforcing it with discriminatory effect. We must not forget that our own free market is one of our most valuable American assets.

The free markets which we would protect against local legislative interference must not be understood to be lawless markets or unregulated markets. I know that one of the chief motives for the multitude of local regulations, rules and restraints is self-defense. I am sure men of large affairs do not know how deeply fearful and resentful our people have become over the non-resident control of their local services and opportunities. Local pride and independence has witnessed the replacement of its own initiative and control of its own enterprises by the distant organization. Its merchant, its utility man, its banker is no longer a home man. Disregard of local feeling and interest have contributed to a determination of local officials to turn their local laws to protect themselves against a threatened economic vassalage.

I not only recognize this sentiment but I sympathize with it. The Federal Government owes the duty to police the channels of interstate trade to protect it from the racketeer, the monopolist, and the price fixer. Often it has been inadequately discharged.

No one has been more critical than I have been of this neglect, or more insistent on a vigorous and uncompromising enforcement of the law to prevent private restraints of trade and to protect home rule of our markets, industries, utilities and opportunities.

But no neglect of this federal duty can justify the imposition by local law of restraints as damaging to trade as the predatory private

restraints. Tariff barriers, community isolation, and discriminatory administration will not save or help local independence or local self-sufficiency. They do not free commerce; they prostrate it. The States can not help solve great economic problems such as the concentration of wealth and control of industry by boycotting each other. If the regulation of interstate commerce should defer to varying local conditions, that can be accomplished by federal administrative regulations, as was done in the recent federal wage and hour legislation; but the States should not be encouraged to exploit varying local conditions as an excuse for discriminating against the commerce of sister States.

This is the reason that Secretary of State Cordell Hull has warned against "barriers erected by our several states * * * not consonant with the welfare of our people as a whole." And Secretary of Agriculture Henry A. Wallace has pointed out that they "cause large and unnecessary economic losses to the whole community."

And why, you may ask, is this sort of action by the States any business of the Federal Administration? The short answer is that one of the principal objectives of the Federal Constitution was to remove the barriers which obstructed and paralyzed commerce among the States. This responsibility has been recognized to rest upon the Federal Government in decisions written for the Supreme Court from those of John Marshall to the latest by Justice Frankfurter.

Speaking of the discriminations and retaliations of the States in matters of commerce, John Marshall said:

> "Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted, whether any of the evils proceeding from the feebleness of the federal government, contributed more to that great revolution which introduced the present system, than the deep and general conviction, that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise, that the grant should be as extensive as the mischief, and should comprehend all foreign commerce, and all commerce among the states. To construe the power so as to impair its efficacy, would tend to defeat an object, in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity."

The great Chief Justice so declared in defeating the contentions of young Roger Taney. But as the years wore on, Taney himself became Chief Justice by the appointment of President Jackson, and while he became one of the Nation's foremost champions of States' Rights, Taney wrote this graceful tribute to Marshall's great decision that defeated him:

> "I at that time persuaded myself that I was right * * *.
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> "But further and more mature reflection has convinced me that the rule laid down by the Supreme Court is a just and safe one, and perhaps the best that could have been adopted for preserving the right of the United States on the one hand, and of the states on the other, and preventing collision between them."

Nothing better illustrates how the keeping of our commerce free from obstruction rises above partisan differences than the concurrence in that endeavor of these two great adversaries, Taney and Marshall. They furnish an inspiring precedent for our non-partisan effort of today.

Age has not impaired the power of the Constitutional prohibition against State barriers. Less than two months ago I intervened to ask the Supreme Court to strike down a Florida statute plainly intended to have

the effect of a local tariff. The Court spoke through Mr. Justice Frankfurter who held that the statute of Florida was a "calculated discrimination" and that "it would not be easy to imagine a statute more clearly designed than the present to circumvent what the commerce clause forbids" and he declared, "Such assumption of national powers by a State has, ever since March 12, 1827, been found to be in collision with the Constitution."

A Federal administration aware of its responsibilities will never lightly throw Federal authority and prestige into conflict with the deliberately adopted policy of any State. But with all the respect due one public authority to another, the Federal authority must and will uphold the Constitutional mandate that commerce among these United States be free. We will continue to support private litigants and to take direct action in the courts where necessary, wherever and whenever a predatory parochialism or a local parasitic interest tries to flourish by obstructing the general commerce among the States.

In this case what is good law is also good business. The prosperity of farmers, the jobs of workmen, the reward of capital engaged in production, all depend on the accessibility of markets. And it is equally to the advantage of our consumers, for only by free trade among the States can the wide choice of products which come from our diversified climates and soils and conditions be brought to our tables, our homes, and to the support of our living standards. Only by free trade among the States can we maintain the flow of raw materials from our wide range of natural resources to the places where the American workman may apply his skill. Only by free trade

among the States can capital engage profitably in mass production and transportation and distribution.

It is not too much to say that the high living standards of America, the availability for our daily needs of the varied products of the Nation and the mass production of our industry are due to the consistency with which this country has pursued the ideal of free trade among the States.

It has been the American commercial ideal that each workman, each farmer, each producer should be stimulated by the knowledge that he might seek the whole Nation as his market and stand equal with all competitors. Each American home should know the whole Nation as its treasure house from which its needs might be freely supplied. That ideal we cannot sacrifice to a self-defeating local selfishness.

But over and above even the requirements of both our law and our prosperity are other values which we can not sacrifice. Our security and our culture rest upon our sense of unity as one Nation with one destiny. It is no accident that the people of the several States are able to consider their differences of interest and viewpoint in peace and good will. Our philosophy of local concession to the general good, expressed in the federation of local sovereignties in a single union, promises a culture of peace and good will that is the hope of the world. Federation is the only technique by which large and common interests of widely separated people may be unified without the extinction of local initiative and local self-government. Transfer to a central authority of the power to decide the rule by which commerce shall move among the parts is fundamental to the success of federation. We would hope, not for sullen submission to this power, but

rather for its acceptance as the lowest price for which we can have the benefits of national unity.

Ward economics is as disintegrating as ward politics. We can not let tribal instincts create a sense of division among us that would tend to Balkanize America. Balkanism, I suppose, is more a state of mind than a condition of geography. No advantage which community isolation can promise could substitute for our sense of national unity. We can not let trade selfishness or jealousy set up legal frontiers in America where trade must halt. Such petty barriers have long since proved to be not only economically futile but also disastrous to peace and good will. Rivals all too easily become enemies.

It must stir the blood of every American to realize that we are among the few who still keep faith with the teachings of freedom and of government by reason and consent. Truly, as President Roosevelt has so fittingly said, such a people have "a rendezvous with destiny." We can keep it, not town by town or even State by State, but only as a single and undivided Nation.