



THE INVISIBLE TARIFFS

JUST as modern warfare has developed the defense of a coast by inventing pill-boxes, concrete emplacements, barbed wire entanglements under water and on land, mines, camouflage, forts, hidden trenches and new and concealed weapons of every kind, to say nothing of air defenses, so elaborate and complicated tariff obstacles have in the course of time been built behind the original tariff front. For generations the importer faced only one barrier when he brought his goods into a port. The customs officials inspected them and fixed the duty—a simple and plain one. The merchant paid it, no questions were asked, and he went on with his business.

Today the importer faces barricades which often seem to him worse than the tariffs themselves. They constitute what are generally classified as “invisible tariffs.” Against them the Charter of the International Trade Organization is particularly aimed; if fully accepted it should end them. These excrescences of the protective system take many forms and range from purely local regulations, such as port of entry dues and requirements and taxes, to national statutes causing endless paper work, high additional outlays, vexatious, and sometimes fatal delays, together with much red tape and constantly changing rules. The mere process of classification and appraisal has become a highly technical and difficult procedure, the latter often deliberately used, even in the case of the United States and Canada, to “restrict and in some cases prohibit the entry of goods,” as the Canadian Consul-

General in New York, Mr. Hugh D. Scully has put it.¹ Frequently it appears as if every conceivable trick were resorted to in order to thwart the desire of the foreigner to sell the goods he has brought to the hostile frontier. Indeed, "customs can and does, at times, completely block imports."² The appraisal system is based on the old merchandising methods of the nineteenth century, as if countries could conduct their tariff business with one another as they did twenty-five, or even seventy-five years ago.

If the importer has won his chief battle with customs officials as to what constitutes the proper valuation of his goods, he may find himself facing some of the following perplexities or handicaps in addition to the fixed tariffs:

1. Countervailing duties on imports stimulated by bounties.
2. Antidumping duties.
3. Quotas, voluntary and involuntary, the absolute ones and those adjusted to the tariffs, often linked with import monopolies.
4. The question of "drawbacks"—the partial or total repayment of duties previously paid on the goods being exported.
5. Detailed examination of the special and often expensive markings of imports which constitute a serious hardship if the importer has to re-export his goods for lack of buyers.
6. Special taxes of all sorts, such as national, State and port levies for such purposes as channel improvements, public works, or plain sales taxes, together with fees for unemployment expenditures and legal outlays, which surely bear no relation to import trade as such.
7. Local, State and Federal assessments for licenses without which the importer cannot do any business.

¹See his admirable paper, "Canadian Problems of Industry, Production and Price Control", read before the Academy of Political Science in New York on November 10, 1943. This address has been freely drawn upon in this chapter, as also one before the Canadian Exporters' Association in Montreal, January 24, 1946.

²*Ibid.*

8. Discriminatory rail rates, imposing charges frequently many times higher than those which domestic shippers have to pay.
9. Refusal of customs authorities to recognize discounts whether in cash or for immediate payment or those earned by cumulative sales and paid for at the end of a year.

If the importer is cleared on all these points he then may come under numerous regulations best described, perhaps, as public rulings intended to prevent the importation of diseased meat, or cattle, plants, seeds, and fruits. He must deal with the question of patents and also of trademarks. He must not only prove that his wares were not made by convict or forced labor, he must show, if he is bringing in literary, musical and artistic productions, books and newspapers, that he has complied with the copyright laws, that his books are not piratical copies of some printed here, and, if they are copyrighted in the United States, that they have not been manufactured abroad—unless his books have been printed for twenty years, in which case they come in free of duty. If the importer is trying to bring milk over the Canadian boundary, he must prove that it has been duly processed according to American standards, and that he holds a license from the American Secretary of Agriculture authorizing him to bring it in.

Then, the foreigner must never forget that the United States reserves the right to refuse entry to any products which it believes have been manufactured or forwarded under unsanitary or improper labor conditions. This may call for the much resented inspection of innumerable foreign factories. Here Consul-General Scully speaks with the voice of high authority:

I have dealt with many complaints, nay bitter protests from exporters in Britain, United States, Belgium, Czechoslovakia and other countries against this practice. No customs procedure stirs

up such misunderstanding, friction and hostility. These foreign probes are an abomination in international trade. The prosecution of such enquiries in the past twenty-five years has resulted in customs representatives being refused admission to European industrial plants and in some cases ordered home. Canada closed down all its foreign value investigating offices in the United States and in Europe at the beginning of the war. I hope they will never be reopened.³

Mr. Scully even "solemnly suggests" that this procedure "should be specifically prohibited in all international trade treaties."

Today the importer must be prepared to have the head of an American customs office seize part of any shipment for sampling purposes. What makes his lot harder is that he cannot know in advance what our Government's decision will be since there are no established standards of admission and any that may exist are subject to change practically without notice. All of this bears heavily upon importers of food and, as has been shown in the case of Argentine meats, this power to inspect and pass upon the desirability of foods is used not merely to protect the health of the citizens of the United States, but as a deliberate means of checking a given traffic and for political purposes.⁴ It is also true that regulations apparently formulated solely to prevent plant disease, or the importation of undesirable products of the soil, are also utilized for purely protective purposes.

Next, there are the usual safeguards against the importation of obscene publications, narcotics, contraceptives, lottery

³See his Montreal address, *cit. supra*.

⁴See Percy W. Bidwell, *The Invisible Tariff* (New York: Council on Foreign Relations, 1939), pp. 17-18 and elsewhere. This volume is the outstanding work in this field; to it the author is much indebted. Our rough treatment of the Argentine meats unquestionably played a part in bringing about the pro-Axis attitude of that country. It is true that the appearance of the hoof and mouth disease has now complicated the problem and given the American stockmen a temporarily valid reason for opposing Argentine importations.

tickets, and even films of prize fights—just as if the latter were not freely shown within our borders. The bringing in of arms, ammunition and explosives is controlled by the Secretary of the Treasury for defense and police reasons. The Federal Alcohol Administration has instituted rigid rules for the control of certain distilled spirits—also in the interest of the public health; thus, Scotch, Irish and Canadian whiskies cannot be imported unless backed up by official certificates declaring that they have been made in compliance with the laws of the countries in which they were manufactured.

Even when tariff barriers between countries have been lowered by means of reciprocal, or other special agreements, discriminations like the special taxes, dues and assessments cited above, may constitute such a handicap to international trade as to defeat the purpose of increasing that trade by lowering the rates. To give concrete examples, an American exporter in a prewar year on arriving at Havana with a shipment of cereals had to pay first of all a tariff of 36 $\frac{2}{3}$ per cent, and then meet fees and special taxes amounting to an additional 18 $\frac{3}{8}$ per cent. Next, he is today obliged to pay an annual municipal tax ranging from \$200 to \$1,000 for a license to do business. Then if he wishes to sell cereals in Cuba, he faces a provincial government tax amounting to 25 per cent of the municipal assessment, after which he receives a bill for a profits tax equal to 8 per cent of his annual profits on his Cuban business! In Venezuela special taxes add a 7 per cent charge to the regular duty of 47 $\frac{1}{2}$ per cent on this same kind of import; in Colombia the regular schedule of 41 per cent is raised to 50 per cent by additional charges, while in the Argentine, which imposes a high duty of 125 per cent on cereals, there is added a special levy of 10 $\frac{1}{2}$ per cent.

When it comes to special freight rates on imported goods,

in South Africa they run from 200 per cent to 700 per cent higher than on domestic freight—this after the imposition of a low tariff of 11 per cent on cereals to which is added another $3\frac{1}{2}$ per cent in special charges. In Brazil the similar railway discrimination ranges from 100 per cent to 200 per cent and before the war the Japanese in Manchuria charged foreign importers twice as much as natives for moving their goods over the South Manchurian Railway. The importer cannot even land his goods unless he has complied in every respect with the marking regulations, to which reference has already been made, and if he is guilty of any violation he is either compelled to re-mark everything or pay an additional 10 per cent duty. There is one classic American case in which twenty thousand bags of cocoa from British possessions in Africa were held to be illegally designated because they were inscribed in French! To avoid a penalty of \$15,000 this cocoa had to be returned to Liverpool.⁵ The Treasury Department has held that in requiring these marks Congress intended to make competition with the domestic manufacturer more difficult and expensive—definite proof of the purpose of adding this invisible tariff to the visible one. If goods are rejected and have to be re-marked the additional cost may be quite considerable. Often, delays in clearing goods make them unsaleable through cancellation of orders.

The greatest opportunity for delay offers itself to the customs officials when they check up on the declared valuations with the avowed purpose of establishing higher values than those placed on the goods by the importers. Since the customs officials possess arbitrary power, the importer must prove that he is not trying to cheat the government before which he is appearing. The result is that, in this country and elsewhere, the charge is constantly heard that officials twist the statutes to "hamper the importer and in

⁵Bidwell, *op. cit.*, p. 75.

some cases prohibit the entry of goods." In Section 402 of the United States customs laws, foreign value is defined thus:

The foreign value of imported merchandise shall be the market value of the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the course of trade, including the cost of all containers and the coverings of whatever nature, and all other costs, charges and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

Obviously the wording of this statute raises innumerable questions and gives every opportunity for delays.

At no point has there been any revision of customs appraisals to make them fit the radically changed methods of doing business due to the advent of department stores, mail-order houses and chain stores with the consequent elimination of the wholesaler in certain lines and his decrease in importance in the whole business process. In addition, there has come the rise of national distributors who dispose of entire factory outputs. To quote Mr. Scully again:

Inevitably, buying power was concentrated and resulted in lower prices being quoted by the manufacturer to those agencies of distribution which relieved him of a large part of his selling costs. But the customs authorities have not changed their practice to suit these new methods. Values for duty are still fixed at the level of the highest prices to the smallest volume distributor in the home market of the exporter.

If the government in the receiving country is favorable to a protective policy, the customs administration operating within the letter of the law may fix the value at the highest value, even if it represents the lowest volume of sales. This has been in fact the practice in both the United States and Canada and has been the occasion of many protests from exporters in both countries.

Naturally, exporters in both these nations have asked for legislation for the establishment of a system prescribing acceptance of the prevailing home market price for each class of the exporters' trade if the importer belongs to the same class in the country of import. It is not surprising that members of the National Federation of Foreign Trade Associations asked it to petition the State Department to seek adjustment of the invisible tariffs and to clarify the whole valuation process. The League of Nations attempted to accomplish something in the way of simplifying the wording used in defining tariff items without being able to achieve important results. Uniform wording would reduce the number of items in the customs tariffs of the various nations and, as Mr. Scully suggests, "it would remove a great many 'fancy' items which represent split-offs from main items conceived to take care of some special interest under special conditions." He, too, is impressed by the "obsolescences, ambiguities, and inconsistencies" which abound, to the despair of exporters the world over. It is to be regretted that Mr. Hull did not make use of the opportunity offered by the negotiating of so many reciprocal agreements to end these abuses.

The United States did not begin to use the quota system until 1933 and then in connection with the National Recovery Act. This is one of the controls of imports which lends itself particularly to political misuse. That is, quotas can be, and are, used, not as economic measures primarily, but as a means of hostile action toward another country. There are two kinds of quotas, absolute ones that fix a definite amount of, let us say, automobiles to be received from abroad in a year, or some other time, and tariff quotas which restrict the quantities that may come in free of duty or at a reduced rate in some fixed period. For example, by the Cordage Act of June 14, 1935, imports of cordage were restricted to six million pounds a year. This was subse-

quently reduced to three million pounds. There are tariff quotas on cocoanut oil in accord with which two hundred thousand long tons are permitted to enter duty free, whereas imports above that figure are assessed a two cents per pound duty. An interesting development in this quota system has been the establishment of "voluntary quotas." Thus, in an agreement signed on December 19, 1938, by the Cotton Textile Institute, Inc., as mouthpiece of American manufacturers, and certain representatives of the Japanese industry, the latter agreed to limit shipments of piece goods to a hundred million square yards each year.⁶

Mr. Bidwell thinks that it is misleading to describe an agreement like this as voluntary, for in each case he cites action was taken after Tariff Commission investigations had been begun for the purpose of forcing higher tariff rates. In other words, the Japanese had seen the handwriting on the wall and decided to limit their imports through negotiation with the American industry rather than be compelled to do so through Congressional action. Much space could be given to a discussion of the sugar quotas, but here special causes come into play, notably our relationship to our insular possessions, Hawaii and Puerto Rico, to the Philippines and also Cuba and other foreign countries. The effect has been to deal with a good part, if not all, of the sugar-producing countries in order to control a considerably harassed industry. The first sugar quotas were established under the Jones-Costigan Act, May 9, 1934, which was renewed in 1937, extended to 1940, and again extended, but was suspended by Presidential proclamation for a time in 1939, and since April 13, 1942.

When we come to countervailing duties we again leave the field of pure protection and enter that of political maneuvering. Here the chief example is afforded by our

⁶*The New York Times*, December 20, 1938, and Bidwell, *op. cit.*, p. 135.

prewar relations with Germany. The principle is for our Government to determine the amount of additional duty per unit which should be imposed to offset a foreign bounty stated in general terms. Thus, on June 4, 1936, on the Attorney General's opinion that German exports were "completely controlled" by the German Government through "barter-mark" accounts, the United States Treasury put on additional duties of from 21½ per cent to 56 per cent on ten classes of German goods, that is, on between 20 and 25 per cent of all the dutiable imports from that country. Germany promptly climbed down and removed all subsidies, whereupon the Treasury rescinded its action until March 18, 1939, when it again ruled, this time that all dutiable merchandise should pay countervailing duties. It was openly alleged then that this was a purely political reprisal for Hitler's taking over the Czechoslovakian protectorate. If so, it was surely illegal since no branch of the Government has the right or the power to impose countervailing duties for use as an instrument of foreign policy. That it was, however, a hostile action, whatever the avowed reason, cannot be doubted since the Second World War was then clearly in sight. Finally, there are the antidumping duties which either exclude imports altogether or reduce them to very small proportions. There have been few applications of these, but the duties constitute a menace for the importers since the Government can at any moment cause long delays by undertaking an investigation in the country of origin to ascertain whether the goods offered are being sold at prices lower than the cost of production.

"Drawbacks" do not constitute an unpleasant threat to the importer—on the contrary. Thus, Section 313 of the Tariff Act of 1930 states that if articles are made or produced in this country by means of imported goods or materials, 99 per cent of the duties paid on those goods shall

be refunded. This does not apply to domestic excise or consumption taxes except in the case of flavoring extracts and medicinal and toilet preparations, when there is a refunding of internal revenue duties imposed upon the domestic alcohol utilized. The general drawback provision does not apply to wheat and internal revenue taxes may be refunded if American spirits and wines, bottled and distilled, are exported. There are also exceptions in the case of salt used in curing fish and meats, and there are refunds on imported materials brought in by shipbuilders and used in the construction of vessels for foreign accounts. Drawbacking does not take on large proportions because of the complexity of the transaction and the expense of the operation.

There is still another dangerous source of harassment for the foreign merchant made possible by the Customs Administration Act, under which any American manufacturer, wholesaler or producer, can intervene in any case by complaining to the Secretary of the Treasury that certain imports are not being taxed high enough. If the snooping of these private individuals seems justified to the Secretary of the Treasury, he can take the case up in the United States Customs Court. The snooper may also complain as to the classification of goods. Naturally, importers do not believe that there is any justification for this private intervention of what are probably business rivals, but the American manufacturers have insisted that they constitute "parties at interest." These cases may be dragged through the courts for as long as three and a half years. It is not probable that a similar regulation can be found in any other country under the sun. Nowhere else, surely, does the protected business man assume not only that he is the Government's partner, but that his additional privileges include the assumption of police functions to be used against his rivals. It all illustrates once more the hostility implicit in protection and in our

administration of the tariff regulations. It is only fair to add that the Federal Trade Commission rejects a large number of complaints and shows no disposition to exercise control over foreign trade.

From this summary of the development of the invisible tariffs, it is alarmingly evident how far the tariff has been taken from the economic field and become a dangerous political instrument. Along this road the United States, or any other country which utilizes its tariffs for political purposes, advances straight toward totalitarianism. Alexander Hamilton would certainly be the most surprised of men to learn that his device for safeguarding and building up infant industries had evolved to such a point that it has become part of the nation's arsenal of defense and offense, for use in our foreign relations without regard to the achievement of economic aims. It is true that Congress has never made this a statutory policy, and that whatever aggressive measures have been taken are the result of unauthorized, if not illegal, steps of executive officials acting under the direction of the President and his several Cabinet heads. Mr. Bidwell is profoundly impressed by this development because highly placed officials speak of "fighting fire with fire," and he says:

This is dangerous talk. A democracy, if it is to remain a democracy, cannot afford to imitate totalitarian methods. . . . The danger is real. Economic sanctions, many thoughtful observers believe, are only a prelude to war. If this is true, then it is of the utmost importance that whatever new controls are imposed by our foreign trade *for political purposes* shall be imposed by Congress, not by administrative action.⁷

One more fact must be pointed out in connection with the invisible tariffs, and that is that they have contributed

⁷*Op. cit.*, p. 20.

largely to the building up of a great group of customs brokers and lawyers who batten on litigation, and encourage snooping, red tape, hindrances, delays and legal procedures of every sort. They have no interest whatever in seeing the process simplified, definitions clarified, delays made impossible, and trade obstacles removed, for all these things give them their livelihood. The mere fact that it is easy in this country to appeal from unfavorable official decisions, adds to the likelihood of the employment of the lawyer. During the fiscal year ending June 30, 1938, the United States Customs Court decided 58,184 cases and received 54,539 new ones. There were no less than 309,288 cases resulting from protests or from questions as to the correctness of classifications, on the Court's docket as of that date—all of which reveal the difficulties in the way of doing legitimate international business with the people of the United States.

If the Charter of the International Trade Organization sweeps all these government-created obstacles away, and frees trade from these ever-growing masked hindrances, the relief to honest exporters will be incalculable. The mere prospect of it should stir everyone interested in the maintenance and expansion of foreign business to bring all possible pressure to bear for the acceptance of the epoch-making institution voted at Geneva to be confirmed at Havana and to be ratified by the American Congress.