Tariff and Non-Tariff Obstacles to United States Imports

The exporter eager to sell in the United States market must overcome a series of obstacles which fall into two broad categories: tariffs, fees, and quotas on the one hand, and compliance with a host of administrative regulations on the other. The following article reviews briefly recent developments and future plans in the first field and analyzes major non-tariff obstacles which the exporter often considers more irksome than customs duties. The first section deals with the scope and problems of Tariff Simplification, now in progress. A second brief section discusses the revision of valuation standards by the U.S. Treasury. Sections 3 and 4 deal with major obstacles: administrative burdens and tariff changes, respectively. In the latter category recent developments, such as the « national security » argument and self-imposed export restrictions are discussed. A fifth, and concluding, section sketches the outlook for U.S. trade policy.

1. Tariff Simplification

Barring an unlikely speedup in the executive and legislative tempo of the governmental bodies concerned the stage is all set for the Tariff Act of 1930 — the basic American tariff law — to celebrate its 30th birthday on June 18, 1960. Even now, however, it has the dubious distinction of being the most long-lived tariff since its first ancestor was enacted in 1789.

In the frequent and varied attacks on American protectionism it is only rarely realized how heavy a burden of blame for administrative delays and confusion must be put at the door of the antiquated tariff. Only to the extent that they were used in specific trade agreement negotiations have industrial developments of the past three decades permeated the tariff, though not always with greater clarity as the result.

The innumerable gaps that thus exist in the basic tariff have had to be filled in by — sometimes confusing — analogies with existing descriptions and conflicting criteria. To illustrate, it need only be mentioned that the only synthetic fibers specifically provided for in the Tariff are rayon and other cellulose-based fibers, and that the Act predates the full development of the plastics industry and much of the modern electronic age. Consequently, the first importation of a new product has had to be classified, over the past 25 years, by various indirect methods, such as similitude in use or material to products described explicitly in the tariff, or some other characteristic which made it fall, with varying degrees of certainty into one or other existing category. This has not always been easy or consistent. With almost 300 ports of entry through which imports may be introduced and each customs officer obliged to classify the merchandise before him, it is little wonder that logic and consistency can often be established only with long delay, to the aggrievement of all concerned.

Among the major hindrances to a frictionless procedure are overlapping tariff descriptions — permitting classification with seemingly equal logic under more than one tariff position —, imperfect terminology — leading to misapplication —, inadequacies of the schedules — leading to over-application of classification by similarity of use or material —, and the importation of new articles not hitherto imported and not provided for in the tariff schedules.

One may doubt that inherently the American tariff is worse, in any of these respects, than those of other countries. What has often made it objectionable to the foreign exporter is its age and therefore the degree to which the above faults have come to encrust the tariff. In addition, the bargaining procedures to which the tariff has been subjected since its enactment have led to minute definitions of those articles which have been their subject while leaving as broad class descriptions those that have not been involved in bargaining. This in itself, however, is not a weakness, as long as the user of the schedules is aware of this situation and is equipped to deal with it.

In other words, the tariff has increasingly become a document intelligible only to the most experts of experts. Much disappointment and anger of foreign exporters and often also American importers stems from an incomplete understanding of the intricacies of this patched-up tariff, including the judicial decisions handed

down by the U. S. Customs Court and the U. S. Court of Custom and Patent Appeals over the past 30 years.

There is now under way a broad effort to remedy this situation to the extent that it can be done short of writing an entirely new Tariff Act. The Customs Simplification Act of 1954, passed by the 83rd Congress in the fall of that year, contained an instruction to the U. S. Tariff Commission to make a comprehensive study of the customs laws of the United States under which imported articles may be classified for tariff purposes and to submit to the President and to the Congress a revision and consolidation of these laws which, in the judgment of the Commission, will to the extent practicable accomplish certain simplification purposes. The Tariff Commission was instructed to prepare an interim report by March 15, 1955 and the final report within two years, i.e. by September 1956. This deadline has, however, been extended and the final report is not due until March 1, 1958.

It is understood that the Commission will have a tentative draft ready in the summer of 1957, and will hold public hearings on it before submitting a final version to the President and to Congress.

The task on which the Commission is now working is a formidable one. In its own words it aims to (a) « establish schedules of tariff classifications which will be logical in arrangement and terminology and adapted to the changes which have occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the markets in which they are sold; (b) eliminate anomalies and illogical results in the classification of articles; and (c) simplify the determination and application of tariff classifications ».

In other words, when it has completed its work, the Tariff Commission will have rewritten the heart of the Tariff law, the descriptions of the articles, but without significantly altering the rates of duty now applicable to all and any article listed. What Congress will do with this proposal is as yet unclear. It may hold its own hearings, pass legislation, or leave the changes to be made by Presidential order. That, however, is a long time off, and it is this time schedule which makes one feel that the Tariff Act of 1930 has a better than even chance to live to see its 30th birthday.

One of the great difficulties confronting the Tariff Commission is that the tariff laws are administered by another agency, i.e. the

Treasury's Bureau of Customs. The Commission, therefore, does not systematically know the application of the tariff schedule to each particular import, unless such imports have become the subject of controversy and administrative or judicial decision by higher bodies than the customs official making the initial determination. Therefore, in rewriting the schedules the Commission might write detailed descriptions for hitherto unlisted items under existing categories which are not the categories under which custom officials have in the past classified the item. This, in turn, might easily involve a substantial change in the rate of duty. Given this divided administrative responsibility in the field of tariffs and customs, the Commission is understandably proceeding with great caution.

2. Value Definitions

There is some apprehension that on another front a well-intentioned effort at simplification may actually result in the opposite, so much so that one high official directly concerned with it refers to the Customs Simplification Act of 1956 as the « Customs Obfuscation Act ». The section involved is the one providing for a change-over in valuation of imports from the former « export or foreign value whichever higher » to export value pure and simple. The difference between the two is, of course, that the going value of an article in the export market may often be different from that in the home market. The legislators, fearing that often the export market value might be substantially below the domestic market value, wrote into the Act a safety clause which is now bedevilling the Customs Bureau: the old formula will continue to be used for all articles, whether actually imported or not, whose value in 1954 under the new formula would have been 5% or more below the value at which they were (or would have been) appraised under the old method of « whichever higher ».

Consequently, the Customs Bureau is now engaged in the formidable task of compiling a list of such articles. This list will be published, though no date has been set in view of the complications attending its compilation. Within 60 days after publication interested parties may demand that additional articles be placed on the list. The protests will be investigated and if found justified

the articles will be added to the list which will then be published as a final list, and all articles on it will continue to be appraised at the « export or foreign value whichever higher », which will in any event remain the standard until 30 days after the final list has been published.

With a good deal of justification customs and tariff experts fear that this list, which will undoubtedly be quite extensive, will introduce novel complications into the import picture, apart from the length of time it will take to assemble the list. As all articles not on the list will automatically be appraised under the new formula, disputes are bound to arise as to whether by analogy or similitude with named articles others not named should not also be treated under the old formula. In other words, the list in itself may easily raise a set of problems similar to those raised by the tariff schedule itself. Ths is going to be doubly confused by the fact that at the same time the Tariff schedule itself is the subject of basic revision.

3. Non-Tariff Obstacles

Apart from the difficulties created by the Tariff Act itself and its antiquated quilt-work of descriptions, imports, as is well known, may come under a variety of other regulations. The extent to which the Tariff Commission will deal with these supplementary import barriers remains to be seen. There is every reason to believe that it will try to incorporate into the tariff structure those that are actual payments, such as the excise taxes which, under the Internal Revenue Code, are levied on a variety of imports, such as sugar, coal, lumber, certain seeds, etc. It is equally likely that the Commission will not concern itself with non-tariff obstacles to foreign trade, such as regulations of the Food and Drug Administration, the Department of Agriculture, the Department of State, and other agencies which, as a by-product of their general obligations, have supervision over certain classes of imported articles. These regulations are often more disturbing to importers than the tariff schedules, perhaps partly because they are considered a backdoor approach to the exclusion of foreign products that cannot be kept out through application of the tariff schedules.

This view is understandable, but actually most of these regulations apply equally to domestic and imported products. The only

difference is that control of imported merchandise is better organized and more closely supervised. Thus it is not at all unlikely that non-conformance is more easily detected in the case of the imported article than in the one produced locally.

It is a well-known fact, for instance, that the Food and Drug Administration does not have nearly enough inspectors to enforce its regulations. For the close to 100,000 domestic establishments subjects to its jurisdiction and inspection the Food and Drug Administration's corps of inspectors numbers about 800. If all establishments were visited on the same scale of frequency, it is estimated that each would be inspected once every eight years. Statistics, though not of a very satisfactory kind for this comparison, broadly confirm this conclusion. In the year 1955 there were carried out a total of 24,151 import inspections under the Food and Drug Act. During the same year 19,469 samples were collected as a consequence of inspections in the domestic field. While one cannot directly compare an import inspection with one sample collected (the latter normally being connected with the inspection of an entire establishment), nonetheless these figures seem to indicate the heavy incidence of control upon imported foods, drugs, and cosmetics.

Yet, when it comes to imports, the entire corps of customs inspectors actually functions as an arm of the Food and Drug Administration, with the result that those regulations, in their implementation, constitute a far heavier burden on imports than on domestic products. Furthermore, Federal regulations which are usually more stringent than State or municipal ordinances affect domestic products only when they are shipped outside the State in which they are manufactured; imported products, on the other hand, are always subject to Federal laws (besides which they may in addition be subject to local ones). It is not, therefore, a case of imports being subjected to more stringent rules than competing domestic products, but rather of imports being more likely to feel the impact of such regulations without fail and unremittingly.

Of these non-tariff considerations those of the Food and Drug regulations are probably the best known. They are concerned with preventing adulterated and misbranded foods, drugs and cosmetics from being sold to the public. As mentioned above, they apply to all foods, etc. in intrastate commerce, whether of domestic or foreign origin. Nonetheless, to exporters to the U.S. the Act has long been a major irritant. The reasons are easy to come by. In

the first place, the Act, with its amendments and general enforcement regulations, by now runs into almost 70 pages, much of it in very fine print. A booklet, explaining to importers the Act and its principal features as they apply to different products, was published in 1947 but has been withdrawn as obsolete in several respects. A new booklet is in preparation, and so conscious is the Food and Drug Administration of the importer's misconception that the Act applies to imports only, that the new booklet will be directed to domestic manufacturers and importers alike.

In any event, the exporter must be familiar with a very lengthy legal document which is replete with exceptions and special cases. It also includes under the terms « adulteration » and « misbranding » many practices which would not necessarily be so called in other countries. To give but two or three examples, any piece of confectionery containing alcohol to any extent whatsoever is an adulterated food; it is considered misbranded, for example, « if its container is so made, formed, or filled as to be misleading », or « if any word, statement or other information required by... this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness... and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use ».

These plus a multitude of other provisions are at best irksome for the foreign producer and frequently perhaps hard to understand and observe. In addition, standards differ from country to country as to what is considered unsanitary. U.S. criteria are generally considered exacting. In at least one instance they are unknown and unascertainable: the Food and Drug Administration will not admit imports that contain « filth », but is unwilling to set publicly any standard of tolerance, though for its own use it has principles that guide its inspectors. The sound argument is that any announcement as to tolerances for dirt would tend to make the upper limit the accepted standard. As for the foreign exporter, it leaves him with nothing but to do « the best he can » and learn by trial and error the limits of tolerance — an expensive way and one to which not exporting to the U.S. at all may be a preferable alternative.

In comparing his fate to that of the American manufacturer, on the other hand, the foreign exporter is at least not subject to inspection of his establishment, but only to that of his product. The latter may meet U.S. standards while the former might not.

Due to the enormous volume of imports, it is not practical for all food and drug imports to be inspected. This is done, instead, on a sample basis. Roughly 10% of all shipments (where a shipment is defined as those goods called a « lot » on a customs declaration) are currently inspected, the remaining 90% passing free of inspection. The items sampled change from time to time according to whatever indications are available as to potential imports of non-admissible items. Foods easily subject to spoilage or inclusion of insects, dirt, etc., such as fish, cheese, spices, are almost always extensively sampled. Others are added as conditions warrant. In 1955, for instance, some 15,000 tons of peanuts, coming from areas not normally supplying the U.S. market, were detained because of insect infestation. Part were later admitted after cleansing.

The sampling procedure and the shifting focus of the Food and Drug Administration's attention explain why an exporter may not have any problem for months or even years and then have his goods stopped, though to the best of his knowledge they have not changed in character. The reason will not be the result of a mere caprice, but the workings of the sampling procedure or some shift in the inspector's attention.

While the possibility of at least temporary detention of his goods always faces the exporter, he can do much to minimize it, not only by intimate knowledge of the appropriate U.S. legislation and administrative practice, but also by « preventive » measures. The Food and Drug Adminstration will give its judgment on the composition and labeling of an item to be imported prior to shipment, and while such a judgment is not binding upon the inspector when actual shipments arrive, it is a fairly good bet that only in exceptional cases will importation be interfered with after preliminary clearance. Another government agency involved in admission of imports goes even further and will examine actual samples prior to commercial shipments: that is the Meat Inspection Branch of the Department of Agriculture, which operates under strict but precise rules, applicable to imports on the same basis as to all meat produced domestically and traded in interstate commerce.

Meat inspection is applied to every single shipment from abroad, but with varying degrees of severity. Oftentimes inspection will be only visual, by color, odor, etc. In other cases laboratory tests will be performed, and of course composition and labeling must conform with U.S. standards. A rigorous procedure is in force

for all canned meats. A sample of each shipment is incubated; if there is swelling of the can the shipment is not admitted. No fresh, frozen or chilled meat is admitted from any country in which there is hoof-and-mouth disease or rinderpest, and cured or cooked meat from such countries are admitted only under certain conditions and only for further processing in federally inspected domestic meat plants. Fully dried meat, on the other hand, is freely admitted from countries having the above diseases, provided it meets all standards of composition and labelling, comes from countries whose meat inspection service has been found to be the equivalent of that prevailing in the U.S. (Italy is one of these countries) and is accompanied by specified inspection certificates issued by the foreign country.

Again, the foreign producer is not deliberately discriminated against, but to the extent that the prescribed procedures are unnecessary or different in his country of origin or that his domestic product contains preserving or coloring items not admissable by U.S. standards he will undoubtedly have additional costs and annoyance in preparing his products for sale in the U.S. market. On the other hand, it must be understood that freedom from foot-and-mouth disease since the epidemic of 1929 has left American cattle with little if any residual immunity to the disease as recent experiments have clearly demonstrated. Therefore, meat inspection is most rigorous as a protection of the country's herds as well as protection of the consuming public from unhealthful or adulterated food. The net result of this control is that currently about 1% of the total tonnage of inspected meat imports is refused entry. What quantities stay away because exporters are unwilling to overcome the hurdles consisting of the above regulations is of course impossible to estimate.

4. Tariff Changes as Tools of Trade Policy

Lastly we come to the aspect of American protectionism that receives a great deal of intermittent unfavorable publicity when occasion arises, but has on the whole had the misfortune of being judged sporadically rather than continuously and consistently. I am referring to the increase in duties and imposition of quotas in order to limit or exclude the importation of a given commodity or class of commodities.

Let us begin by looking at the picture statistically. There exist today three principal mechanisms by which protectionist measures may be established: the so-called « escape clause », the « national security » clause, and Section 22 of the Agricultural Adjustment Act.

(1) *The « escape clause »*

Making its first appearance in the bilateral trade agreement between the United States and Mexico in 1943, the escape clause found its most universal application in the General Agreement on Tariffs and Trade (GATT), before an act of Congress in 1951 made it mandatory for the escape clause to be included in all future trade agreements and as soon as practicable in all agreements then in force.

What the escape clause provides is that either party to a trade agreement may modify or withdraw any concession made in the agreement if the article on which the concession was made enters in such increased quantities as to cause or threaten serious injury to the domestic industry producing like or directly competitive articles.

Since 1951 even the procedure to be followed in escape clause matters has been rigidly laid down. The Tariff Commission is obligated to make investigations upon request by the President, Congress, an interested party, or may do so on its own, and report within 9 months of the date of the application to the President. Normally, public hearings are held within that period. If the Commission finds evidence of actual or threatened injury it must recommend to the President a remedy, in the form of modification or withdrawal of the concession, or import quotas. At the same time as these recommendations are made, they must be made public. All escape-clause actions taken by the President must be reviewed by the Commission two years after the original action, and each year thereafter.

While the escape clause opens the field wide to the increase in individual rates of duty and imposition of import quotas, the history of the clause shows that its application is a rare exception rather than the rule. The Tariff Commission has been reluctant to find actual or threatened injury, and the President has been reluctant to go along with the Commission in numerous cases in

which action had been recommended by it. There follows a statistical summary of escape clause history, as of the end of 1956:

Number of applications since 1943	75
Dismissed by Tariff Commission at request of applicant	5
Terminated by Tariff Commission without formal findings	3
Dismissed by Tariff Commission after preliminary inquiry	14
Decided against applicant	26
Total dismissed or denied	48
Decided in favor of action	17
Commission evenly divided	5
Pending before Commission	5

As the tabulation shows, the Commission favored the granting of relief in only 17 out of 75 cases, or just over 20%. Its six members divided 3:3 in an additional 5 cases. It dismissed, on one ground or other, almost 2 out of 3 cases brought before it. In the 22 cases on which the Commission voted for action or split evenly, and which therefore had to be taken to the White House for a decision, the President followed the Commission's recommendation in only 7 instances, rejected their recommendation in 14 (in 6 of which the Commissioners had voted unanimously in favor of action), with the remaining case pending at this time.

As a net result, therefore, less than 1 out of 10 cases brought before the Commission for escape clause action have up to now actually resulted in positive action. The reason for rejection on the part of the Commission has usually been a finding that the deterioration in the domestic applicant's economic position was not a result of increasing imports but rather of deeper-going causes to be sought at home. The Presidential reluctance to follow the Tariff Commission's recommendation, on the other hand, has usually been motivated not by any disagreement with the economic findings of the Commission, but rather by broad foreign trade and policy considerations transcending those properly investigated by the Tariff Commission. What makes the record all the more remarkable is the fact that in half the cases in which the President declined to invoke the escape clause he did so in the face of a unanimous vote to the contrary on the part of the Tariff Commission. Let us look into the reasoning given in the most recent instances.

On December 10, 1956, the President decided against a tariff increase for groundfish fillets, against the unanimous advice of the Commission. « It is the President's responsibility... to consider not only the question of injury and measures recommended for its relief, but also all other pertinent factors bearing on the security and well-being of the nation », the White House announcement said, and went on to state the President's reluctance « ... to impose a barrier to our trade with friendly nations unless such action is essential and clearly promising of positive, productive results to the benefit of the domestic industry in question. My reluctance... is heightened in this case because the other nations concerned are not only our close friends, but their economic strength is of strategic importance to us in the continuing struggle against the menace of world communism ». He was alluding to Canada, Iceland and Norway. He then proceeded to express his doubt that the domestic industry's troubles were in fact due to rising imports and warned that the imposition of further trade restrictions might in fact discourage needed improvements in the industry.

A month earlier, the President refused to accept the — again — unanimous recommendation of the Tariff Commission to increase tariffs on lighter flints (technically known as ferrocerium). This time he cited no overriding national policy considerations, but simply stated his lack of convinction that the domestic industry's troubles were in fact substantially due to imports, as the Commission had determined. In other words, the President disagreed with the technical findings of the Commission within the narrower sphere of the Commission's activity.

Siding with the negative vote of half the Commissioners in December 1954 and declining to put quota restrictions on wood screws of iron or steel the President enunciated an important principle in saying that « ... the escape clause was not intended to relieve the steady pressure of internal competition toward better production methods and lower costs ». A similar formulation was used by the President in refusing to raise tariffs on imported hand-blown glassware: « It would appear that the difficulty confronting this industry is not the duty concession but a rapidly shrinking consumer market. In that situation no amount of change in duty can avoid the necessity of domestic producers... finding means of preparing themselves to meet the changes in industrial techniques

and consumer preferences that are inescapable in a dynamic economy such as ours. ... Added tariff protection... might offer some short-term relief. That relief would, however, cloud the issues as to the industry's long-run needs. By postponing the needed changes, it would tend also to discourage product and market research ».

Also in December 1954 the President rejected a unanimous Commission recommendation to raise the duty on screen-printed silk scarves. In addition to questioning the findings of the Commission the President noted that the action would be directed primarily against Japan and that restrictive practices against Japanese trade were against the interest of the U.S. at that time.

These examples give a fair view of the scope of Presidential action and the difficulty of obtaining escape clause relief. Since the birth of the escape clause only the following seven commodities have been able to secure Presidential action:

Women's fur felt hats and hat bodies;
Hatters' fur;
Dried figs;
Alsike clover seed;
Watches, movements and parts;
Bicycles;
Toweling, of flax, hemp or ramie.

Of these, the watch and bicycle decisions raised a good deal of discussion, but seen as part of the total escape clause picture they do not seem such prominent examples of American protectionism as they might in isolation.

(2) « *Section* 22 »: interference with farm programs

More successful in defending its domestic market have been the farm interests. Fees and especially quotas have been widely used since 1939 to exclude or reduce imports. The means to this end has been the well-known Sec. 22 of the Agricultural Adjustment Act which, broadly speaking, authorizes the President, at the request of his Secretary of Agriculture, to ask the Tariff Commission for an immediate investigation if actual or potential imports of farm products are interfering with any of the programs conducted by the U.S. Department of Agriculture. Such investigations have precedence over all others. If the item involved is perishable so

that an emergency situation may be said to exist, the President may act independently, while the Tariff Commission pursues its investigation. Imports may be limited by the imposition of fees or quotas, and no trade agreements may in any way interfere with decisions under Sec. 22.

In the past, cotton, wheat, oats, rye, barley, wool, tree nuts, dairy products, peanuts, and flaxseed (and the oil derived from them) have been supported by import restrictions imposed under Section 22. Of these, quantitative quotas are presently in effect on certain types of cotton, most wheat, rye, dairy products, peanuts, flaxseed (and their oils). The last three are also subject to special fees. Restrictions on tree nuts, oats, and barley have expired, and those on peanuts greatly relaxed, but all are subject to continuous investigation.

As the United States is traditionally a grain and cotton exporter, the relative import restrictions are without much significance. Those applied to tree nuts and even more so to dairy products, on the other hand, have been subject to continuous criticism, both here and abroad. Since tree nuts have been without restrictions since October 1, 1955, and peanut import restrictions much relaxed, it is at present principally the restrictions on dairy products which constitute a bone of contention.

A little-known episode connected with dairy product restrictions and illustrating the careful scrutiny which is given to import restrictions is worth recounting here. Early in 1955 the Department of Agriculture requested the President to instruct the Tariff Commission to call a hearing for the purpose of stopping an apparent evasion of the import quotas. The dairy quotas contain, among others, one for « Italian-type cheese, made from cow's milk, in original loaves ». The Department of Agriculture had come to know that some ingenious traders were carrying on a brisk trade of this type of cheese imports which American customs officers could not apply against the annual quota of 9,200,100 lbs. for two simple reasons: (a) some of the cheese did not come in original loaves but in half, quarter, or even smaller loaves; (b) some of the cheese had a small admixture of sheep's milk, and was therefore not « made from cow's milk ». While there could be little doubt in anyone's mind that these novel types of imports were designed to evade the quota restrictions, a majority of 3 out of 5 participating Tariff Commissioners ruled that the original Proclamation which had established the quotas could not be amended to include these

types without a full-scale new investigation. In this opinion the Commission was upheld by the Attorney General to whom the President turned for legal advice. Consequently, the President rejected the application of the Department of Agriculture, and to this day these imports have not been limited by any quota restrictions, as no one has requested a full-scale investigation. This episode is mentioned here not so much in order to exemplify the ingenuity of some members of the foreign trade community, but rather to show the rather scrupulous and careful approach to tariff problems on the part of the Executive branch.

There are before the Tariff Commission at the present time applications to impose restrictions in imports of dates, and of butter oil and butter substitutes containing 45% or more butterfat. Neither of the two has ever before been the subject of a Sec. 22 investigation and it is therefore difficult to predict the outcome (1).

(3) *National Security.*

In 1955, Congress gave aggrieved domestic producers yet another route for requesting protection. In the Trade Agreements Extension Act of 1955, Congress made it a duty of the Director of Defense Mobilization to advise the President if he has reason to believe that any article is being imported in such quantities as to threaten to impair the national security.

At the time the Act was passed by Congress it was feared that this provision would open wide the doors to a general rush for tariff protection. Actually, in the 18 months passed since then only four applications have ever been scheduled for hearings. Of these, one — fluorspar — has been cancelled at the request of the domestic producers. A second one — petroleum — became pointless when blockage of the Suez Canal restricted oil imports anyway; it is now being reconsidered. Of the remaining two — cordage and jeweled watches, pin-lever watches and clocks — the Office of Defense Mobilization has thrown out the claim of the domestic cordage producers that imports threaten national security, while it has not yet completed its investigation in the watch case. As watches are already protected by escape clause action, it is not very likely that

(1) On February 5, 1957, the Tariff Commission recommended against import restrictions on dates.

additional action will be taken under the controversial « national security » provision.

The negative decision on cordage is reassuring as a first indication that Administration circles will not use the national security argument lightly. Had the outcome been favorable to the applicants, the Government would have been flooded with requests for tariff increases or quotas, based upon the « national security » angle.

One related development deserves mention because of its potential impact upon foreign producers. The manufacturers of hydraulic turbines had asked the Office of Defense Mobilization to ban the use of imported turbines in all projects in which the Federal Government is the purchaser. Such ban is possible under powers given to the Office of Defense Mobilization to extend the provision of the « Buy American Act ». Under the « Buy American Act » the recent practice has been to disregard foreign bids when they are less than 6% below domestic bids (or less than 12% if the domestic bidder is in a distressed area). The action requested by the hydraulic turbine makers was to disregard cost differences entirely and simply set up a rule under which foreign bids would be excluded. The decision of the Office of Defense Mobilization has been to reject the application as such. By recommending, at the same time, that each case be decided on its merits it has, however, set up the mechanism for accomplishing the end of the rejected application. In fact, immediately following the announcement, two Government contracts for which an Austrian turbine firm had submitted the lowest bid by far, were awarded to an American manufacturer. One would have wished for a more clear-cut decision on such a far-reaching matter.

(4) « *Voluntary* » *Restrictions*

To some extent the relatively minor extent to which tariffs and quotas have been used is deceptive, and may increasingly become so. The reason is the newly developed resort to seeking voluntary export restrictions on the part of the exporters. This system was first tried on agricultural commodities. In the case of oats, Canada, faced by certain U.S. import restrictions, announced late in 1953 that for one year it would limit its exports to the U.S. to exactly the quota that had been recommended by the Tariff Commission, and consequently no quota was imposed by the U.S. A year later a similar development took place in the case of tung

nuts and oil, when Argentina and Paraguay voluntarily limited their exports to the U.S. The latest and most significant instance is the voluntary limitation of Japanese cotton textile exports to the U.S., announced in mid-January 1957. In all cases, the term « voluntary » is somewhat of a misnomer. What is really developing are bilateral agreements, in which the foreign exporter agrees to an export quota, and the U.S. in turn agrees not to impose import quotas. It is a development which many look at with grave concern, as it will tend to keep the official record clean while restricting foreign trade as effectively (2). For instance, the voluntary restriction assumed by Japan has already enabled the President to reject increased duties or quotas under pending escape-clause proceedings for velveteens, and similar action is likely on gingham cloth (3), but such action will have only nominal meaning as the principal target has been eliminated through the self-imposed restrictions put into force by Japan.

5. Conclusion

In reviewing legislation and administrative practice in the field of foreign trade one is struck by the coexistence of various trends, often in seeming contradiction: legislation that has made increasing provision for raising tariffs and imposing other burdens on imports, on the one hand; the continuous lowering of tariff rates under GATT and an almost overwhelming reluctance on the part of the executive branch of the Government to succumb to the pressure of aggrieved domestic producers and apply the measures of protectionism forged by Congress; and, finally, an effort by both legislature and administration to modernize and simplify both the tariff and customs structure and administration. There is substantial hope that out of these often divergent trends will eventually emerge a simpler, up-to-date customs system, with a good many of the provisions of small substance but large nuisance value removed. This hope must, unfortunately, be matched by an equal measure of fear that, despite all intentions to the contrary, in the transition

(2) Others, notably Congressmen, have condemned this method as an encroachment of the executive on the legislative branch of government.

(3) On January 29, 1957, the Tariff Commission dismissed the case, at the request of the applicant.

period things may not only not improve but get worse. There is little fear, however, barring unforeseen reversals in the general economic climate of the United States, that there will be a general retreat from reserving such special measures as the escape clause only for rare instances, a policy that is by now grounded in eight years of operation under both Democratic and Republican Administrations.

On the other hand, there is justified concern that the method of prevailing upon foreign producers to impose upon themselves restriction of exports to the United States might find increasing favor, largely because it would preserve the outward appearance of a liberal trade policy but accomplish the objectives of protectionism with equal, and perhaps even better, success. Such a development would have to be put down as a definite withdrawal from a liberal trade policy.

As has been true all along, Congress is far more exposed to and affected by pressures from actually or potentially injured parties than is the executive. Therefore, legislation has on the whole been more restrictive than administration. Unfortunately, this set of conditions leaves unrelieved one permanent obstacle to increased imports: the foreign exporter's fear that if successful he may become grist for the ever-ready mill of protectionism, and his lack of confidence that he will not be the statistical one out of ten who gets caught in it and in the many administrative provisions which may at any time interfere with his product.

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