

## CHAPTER 8

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### QUANTITATIVE RESTRICTIONS

THE *Charter* does not condemn tariffs in principle; it permits old duties to be increased and new duties to be imposed; it calls only for the reduction, on a selective basis, of duties that may be too high. The *Charter* condemns quantitative restrictions; it permits their employment, of necessity, under specified conditions, but only on sufferance and as an exception to the general rules of policy. If domestic production is to be protected, the tariff as a method of restriction is to be preferred.

Tariffs permit the volume of trade to grow as costs and prices fall abroad and income and demand increase at home. They permit prices and production within each country to adapt themselves to the changing conditions of the world economy. They permit the direction of trade to shift with changes in comparative efficiency. They can be so devised and administered as to accord equal treatment to all other states. They leave the guidance of trade to private business, uninfluenced by considerations of international politics. Tariffs are the most liberal method that has been devised for the purpose of restricting trade. They are consistent with multilateralism, non-discrimination, and the preservation of private enterprise.

Quantitative restrictions, by contrast, impose rigid limits on the volume of trade. They insulate domestic prices and production against the changing requirements of the world economy. They freeze trade into established channels. They are likely to be discriminatory in purpose and effect. They give the guidance of trade to public officials; they cannot be divorced from politics. They require public allocation of imports and exports among private traders and

necessitate increasing regulation of domestic business. Quantitative restrictions are among the most effective methods that have been devised for the purpose of restricting trade. They make for bilateralism, discrimination, and the regimentation of private enterprise.

These were the major reasons, but not the only ones, for bringing quota systems under international control. Where a country is a party to a trade agreement, its freedom to impose quotas on imports of products covered in the agreement must be limited if the concessions made in its tariff are not to be nullified. Where a country is a member of the International Monetary Fund, its freedom to impose quotas on any imports must be limited if the rules adopted by the Fund to regulate the use of exchange controls are not to be evaded. As suggested in the American *Proposals*, however, the scope of the provisions contained in the *Charter* is broader than would be required for either of these purposes. The rules that govern the use of quota systems apply to all the imports and to all the exports of all the members of the ITO. It is because they are undesirable in themselves that such systems are to be controlled.

Quantitative restrictions present the major issue of commercial policy. Tariffs are thought to be old-fashioned; exchange controls are governed by the IMF; quota systems are the most effective method of protection that remains. Nations all over the world are experienced in their use. If uncontrolled, they promise to become universal and permanent. Freedom to employ them is not readily to be surrendered. The proposal that this freedom be limited evoked a debate that went on for many months. The toughest problem in the trade negotiations came to be known by its initials: Q.R. It would not be inaccurate to describe the meetings at London, Geneva, and Havana as the United Nations Conferences on Q.R.

#### THE NEGOTIATIONS ON Q.R.

It was proposed in the *Suggested Charter*, prepared by the United States, that members of the ITO adopt a general rule forbidding the use of Q.R. It was recognized that exceptions to this rule would be required to permit the use of quotas to support domestic agricultural programs, to safeguard balances of payments, and to meet certain problems that were less important or temporary in character. Where

Q.R. was to be permitted under these exceptions, it was proposed that a general rule be adopted to forbid discrimination in its use. Here, too, it was recognized that certain exceptions, paralleling those contained in the *Articles of Agreement* of the IMF, would be required. In both cases, the exceptions were so drafted as to limit their scope and provide safeguards against abuse. To prevent the use of exchange controls to evade the rules of the ITO and the use of Q.R. to evade the rules of the IMF, it was proposed, finally, that the two agencies should pursue a common policy.

These proposals would not have committed nations completely to eliminate Q.R. It was recognized that such a commitment was unobtainable. Exceptions to the general rule were dictated not only by political considerations, but also by economic necessity. Without them, the rule could not have been accepted or, if it were accepted, could not have been expected to work. The only choice that could be made was between a situation in which any nation, at any time, would have enjoyed complete freedom to impose Q.R. as extensively and intensively as it chose and agreement on a general rule that would condemn Q.R. in principle, confine it to those situations in which it was unavoidable, limit its duration, and prevent its abuse. The *Suggested Charter* chose the latter course.

This approach was accepted by the Preparatory Committee and adopted by the Havana conference. The general rule forbidding Q.R. was written into the *Charter* in the words proposed by the United States: "No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country" (20-1).

Q.R. was thus condemned in principle. But repeated efforts were made to widen the exceptions to the general rule. Most of these efforts were defeated; some of them ended in compromise. But compromise came slowly; its final terms were spelled out in elaborate detail. Where exceptions were permitted they were hedged about with conditions to be met, criteria to be satisfied, procedures to be followed, and limitations to be observed. The ITO was given larger

authority to determine the scope of such exceptions, to restrain their application, and to control their duration. As such safeguards were elaborated in successive drafts, the articles on Q.R. grew in length and in complexity. The resulting text is formidable in appearance. But it is through its very complications that Q.R. is to be subjected to international scrutiny and control.

Most of the exceptions now permitted by the *Charter* are technical or transitory in character; they do not involve significant departures from the general rule. Permission is given for export restrictions designed to relieve critical shortages of foodstuffs and other essential products (20-2), for those employed along with domestic measures for the conservation of exhaustible natural resources (45 viii), and for those imposed to check the exportation of a raw material when the price of a finished product is controlled (45 xi). Permission is given for export or import restrictions required to enforce the observance of standards for the classification or grading of commodities (20-2), for those established under approved intergovernmental commodity agreements (45 ix) and agreements for the conservation of fisheries resources and wildlife (45 x), and for those needed, during the postwar transition period, to effect an equitable distribution of products in short supply, to maintain price controls, or to facilitate an orderly liquidation of government surpluses and war industries (45b). Some of these exceptions will disappear as the consequences of the war are overcome. The others have a limited application; they are likely to be used only in rare instances.

Of greater importance are the three exceptions that remain. The first, proposed by the United States, permits members to employ Q.R. in the enforcement of domestic agricultural programs. The second, required to meet the situation in western Europe, permits members in balance-of-payments difficulties to impose quotas to protect their monetary reserves. The third, sought by all the undeveloped countries, permits the use of such restrictions, where approved in particular cases, or meeting specified criteria, for the protection of infant industries. The first two of these exceptions are discussed in the following sections of this chapter. The third is described in Chapter 14.

## Q.R. TO ENFORCE AGRICULTURAL PROGRAMS

The exception for agriculture is necessitated by domestic programs which support the prices of agricultural products by restricting the quantities that may be produced or marketed. If such programs are to be effective, imports must also be controlled. Otherwise, contraction of output and sales at home would be offset by an expansion of imports from abroad. Prices would be held down; the program would fail.

When it asked for this exception in its *Suggested Charter*, the United States also proposed the inclusion of certain safeguards to afford assurance that it would not be abused. At the Havana conference, certain countries, particularly Peru and Mexico, urged the deletion of this escape. Their proposals were rejected; the safeguards were strengthened; the exception was retained.

The *Charter* permits the use of Q.R. where it is required for the enforcement of domestic production controls, marketing controls, or surplus-disposal programs (20-2c). It lays down two conditions to prevent abuse. First, imports and sales of the domestic product must be restricted proportionately; Q.R. may not be employed to change the relative positions of foreign and domestic producers in the domestic market, that is, it may not be used for protective purposes. Second, advance notice must be given to the ITO and to other members of the quantities that may be imported and an opportunity for consultation must be afforded to any member who may complain that the cut in imports is deeper than the foregoing requirements would permit. But the decision in such a case is to be made by the member imposing Q.R.; it need not seek the prior approval of the ITO (20-3).

## Q.R. TO PROTECT MONETARY RESERVES

The exception that permits a member to employ Q.R. when necessary to safeguard its balance of international payments is a recognition of the hard fact that nations, like individuals, cannot long continue to buy things for which they cannot pay. If money is lacking, purchases must be cut accordingly. If bankruptcy is to be avoided, imports must be curtailed. It is not to protect producers

from foreign competition, but to protect reserves of gold and hard money from exhaustion that Q.R. is so widely used today. When trade, over long periods, is seriously out of balance, its use is unavoidable.

The articles that deal with the balance-of-payments problem are among the longest in the *Charter*. They are long because international exchange is a complicated business. The *Articles of Agreement* of the IMF, relating solely to the financial aspects of the subject, cover more than forty closely printed pages. And since the matters dealt with in the two documents are so closely related, it was necessary, in drafting the *Charter*, to adapt its provisions to the corresponding regulations of the Fund. The balance-of-payments articles of the *Charter* are long, too, because they seek to insure that Q.R. will be confined to cases of financial stringency, that it will be administered in accordance with agreed rules, and that these rules will be effectively enforced.

A member may employ Q.R., under these articles, only "to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves" (21-3a). In other words, it may not impose quotas unless unrestricted imports would reduce its holdings of gold and convertible currencies to levels inconsistent with continued financial stability. The existence of such a situation must be demonstrated to the satisfaction both of the IMF and the ITO. If the IMF should find that a decline in a member's monetary reserves is not serious, that such reserves are not low, or that a given rate of increase in such reserves is not reasonable, or if the ITO should find, on the basis of determinations made by the Fund, that the threat to such reserves is not imminent, the exception would not apply and Q.R. could not be imposed (24-2).

In some cases, imbalance in a nation's trade may be attributable, not to causes beyond its control, but to its domestic economic policies. A nation might thus put itself into a position that would compel both the IMF and the ITO to find that its monetary reserves were seriously endangered. It might do so inadvertently or deliberately. In neither case could the IMF or the ITO require it to adopt internal

measures that would balance its external accounts. Domestic policies remain within the sovereignty of member states; neither the IMF nor the ITO is authorized to intervene. It is thus possible that members may sometimes employ Q.R., even though they would be able to correct the conditions that necessitate its use. In these cases, as in others, however, rules are laid down to guard against abuse.

A member imposing Q.R. must "pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources" (21-4*c*). It may select imports for restriction on grounds of relative essentiality, but it must "admit any description of merchandise in minimum commercial quantities" and it must "avoid unnecessary damage to the commercial or economic interests of any other Member" (21-3*c*). And, finally, it is required progressively to relax and ultimately to eliminate its restrictions as its financial condition improves (21-3*b*). Under this provision, quotas should gradually be enlarged and eventually dropped. As the work of reconstruction goes forward, as trade is brought back into balance, and as currencies again become convertible, the spiral of restrictionism should be reversed.

For the enforcement of these provisions, detailed procedures are prescribed. A member considering the imposition of new restrictions is required to consult with the ITO as to the nature of its difficulties, alternative methods of correcting them, and the possible effects of these methods on other members. A member maintaining or intensifying existing restrictions may also be required to enter into such consultation. In this way, some other solution of the problem may be found.

Any member may complain that another member is employing Q.R. in a manner inconsistent with the provisions of the *Charter* or unnecessarily damaging to its trade. The ITO will then consider the complaint and, if it is found to be justified, and if an amicable settlement cannot be reached, will recommend the withdrawal or modification of the restrictions in question. If this recommendation is not followed, the Organization may authorize the complaining member to impose upon the trade of the offending member higher tariffs,

quotas, or other measures that the *Charter* would otherwise forbid. In this way, an effective penalty is brought to bear.

In order to avoid the imposition of such a penalty, a member may request the ITO to give prior approval to restrictions which it desires to maintain or to impose or to a statement of the circumstances under which such restrictions may be imposed. The Organization may grant such approval, specifying the extent, degree, and duration of the restrictions permitted. Thereafter, no other member may successfully challenge the legitimacy of restrictions falling within its scope (21-5).

Within two years of its institution, the ITO is required to call into question all restrictions then in use. And whenever imbalance in trade is such as to permit widespread and persistent use of the exception, it must initiate discussions directed toward agreement on other measures through which balance may be restored (21-6).

#### NON-DISCRIMINATION IN Q.R.

Where members are permitted to impose Q.R., another general rule requires that it be administered without discrimination among other states. If quotas are applied to imports from one country, they must be applied with equal severity to imports from all other countries. In so far as possible, each of them must be given the share of trade that it would have if no restrictions were imposed.

To this end, if it is practicable to do so, the member employing Q.R. must publish quotas stating the quantities of products that will be admitted. If these quotas are allocated among countries, the allocations must be fair. To insure their fairness, the member is preferably to reach an agreement with the other countries concerned. Where this is impracticable, it may base its allocations on the distribution of trade in an earlier period that is believed to be representative, taking due account of shifts in production and changes in relative efficiency. It must afford opportunities for consultation on such matters to the ITO or to any of its members. If quotas are not published, and importers are compelled to obtain licenses, such licenses may not require that goods be imported from a particular country. Full information must be given to other members, upon request, regarding the administration of any licensing system, the licenses



granted over recent periods, and their distribution among supplying countries (22).

Detailed as these rules may be, it is not to be expected that they can assure equality of treatment. A country that administers a quota system may discriminate in selecting the commodities that are to be controlled, in classifying those commodities, in adopting a base period to govern allocations, and in appraising the other factors that are involved. Discrimination is not to be avoided unless members act in good faith, living up to the spirit as well as the letter of the *Charter's* rules.

But even here exceptions are required. During the present period of reconstruction, currencies throughout the world are inconvertible, many countries find it difficult to make external payments, and many countries therefore use Q.R. In such a situation, enforcement of the rule of non-discrimination, instead of causing trade to expand, might force it to contract. Country A, possessing a relatively small supply of the hard currency of Country B and a relatively large supply of the soft currency of Country C, and finding it necessary to fix a small quota for imports from Country B, would be required to impose as strict a limitation on its purchases from Country C. Even though its supplies of the currency of Country C were ample, it would be unable to spend them for goods that Country C was ready to export. Trade that otherwise might have taken place would thus be stopped. If such a stoppage is to be prevented, Country A must be permitted to accord a larger quota to Country C. In other words, it must be permitted to discriminate.

But such discrimination has its dangers. It may be employed not to preserve financial stability, but to obtain a preferential market for a country's trade. Country A, for instance, may grant a larger quota to imports from Country C on the condition that it obtain a larger quota for exports to Country C. In this way, trade between the two countries may be balanced and each of them may secure protection, within the market of the other, against the competition of the outer world. Discrimination, though justified by financial necessity, may thus divert trade from normal channels, establish vested interests, and fasten bilateralism on the commerce of the world.

For these reasons, the framers of the *Charter* introduced another exception and set up an additional series of safeguards: first, they granted to such countries as might be permitted to use Q.R. to avoid international bankruptcy the further permission to discriminate in its administration; and second, they sought to insure that such discrimination would be limited in scope and in duration and that it would not be employed to obstruct the revival of multilateralism in world trade. The negotiations through which these provisions were fashioned were among the most protracted and the most bitterly contested at each of the conferences. Latitude for discrimination during the transition period was sought by the United Kingdom and by France. Rules to circumscribe discrimination were urged by the United States. The resulting text is a compromise between the views of these protagonists.

#### HOW DISCRIMINATION IS TO BE CONTROLLED

There are two methods by which permissible discrimination may be kept within bounds. The first sets as a limit the practices in effect on some base date. This has the advantage of being definite; it has the disadvantage of affording greater latitude to some countries than to others, even though their circumstances, at the moment, are the same. The second method limits discrimination by requiring adherence to fixed criteria. This has the advantage of treating all countries alike, but acceptable criteria are by no means easy to devise. The London draft of the *Charter* adopted the first method; the Geneva draft adopted the second. But at Havana neither could muster general support. The base date in the London draft operated to impose on the United Kingdom limitations that were more strict than those applied to the countries of western Europe. The criteria in the Geneva draft proved to be more severe than the western Europeans could accept. This knot was cut, in the final compromise, by permitting the parties to the Geneva trade agreement to elect between these two alternatives. Each of them must now remain within the limits established either by a base date or by fixed criteria. In the course of these negotiations, both alternatives were revised in detail, new requirements were added, and the duration of the exception provided at Geneva was curtailed. The prose

style of the resulting article leaves much to be desired. But through its clumsy wording discrimination will be disciplined.

The exception that is now provided will come to an end, for each country, at the expiration of its transition period under the rules of the IMF. When this period has been terminated for every member of the ITO, the article will become inoperative (23-1*f*).

For most countries, the scope of discrimination permissible in the administration of Q.R. will be that permitted in the administration of exchange controls under the rules of the IMF; restrictions in effect on the base date fixed by the Fund may thus be continued and adapted to changing circumstances unless the Fund rules otherwise (23-1*b*). Members may also continue and adapt restrictions in use on March 1, 1948; this provision resulted from a dispute between the Fund and France; it is not believed to have practical significance (23-1*c*). Parties to the Geneva trade agreement may elect to be governed, instead, by the following criteria: (1) Discrimination must be required to obtain additional imports. (2) Prices paid for such imports must not be substantially above the market level. (3) Any excess in such prices must be progressively reduced. (4) Exports salable for hard money must not be contractually committed through bilateral agreements with soft-money countries. (5) The discrimination permitted must not cause unnecessary damage to the commercial or economic interests of another member (Annex K). Countries operating under either option are required so to administer their controls as to promote the maximum possible development of multilateral trade and the attainment of balance in their international accounts (23-1*c*).

The rules governing most countries will be enforced, in effect, by the IMF; those governing the Geneva option will be enforced by the ITO. Beginning in March 1950, the Organization will make annual reports on all discriminatory restrictions still in force. Beginning in March 1952, members must consult the IMF or the ITO concerning the continued use of such restrictions; they must keep any new restrictions within such limits as these bodies may prescribe. Members electing the Geneva option must modify or discontinue any restriction that the ITO finds to be inconsistent with

its rules and must abandon any or all discriminations when the ITO finds that they are no longer required (23-1*g,h*).

Certain other exceptions must be mentioned. Some of them conform to the provisions of the *Articles of Agreement* of the IMF. Members with a common quota in the Fund, such as a mother country and its dependent colonies, may impose on outsiders Q.R. that they do not apply among themselves. Until the end of 1951, a member may discriminate in favor of another country whose economy has been disrupted by the war (23-3). It may employ import quotas whenever the IMF permits it to employ exchange controls to ration scarce currencies. Another exception, temporary in character, permits the United Kingdom to maintain preferential quotas on four or five products pending their elimination by negotiation or their replacement by tariff preferences (23-5). Another enables a member so to control its exports as to obtain convertible rather than inconvertible currencies (23-4). A final exception, unlimited in duration, authorizes the ITO to grant a member permission temporarily to impose discriminatory restrictions on a small part of its external trade (23-2). This provision, surviving the Fund's transition period, is designed to provide some flexibility for dealing with cases that may arise in an emergency.

#### EXCHANGE CONTROLS AND THE IMF

Since Q.R. and exchange controls may be employed alternatively to affect the flow of trade, it is important that the requirements that govern these two devices should be laid down and administered with such consistency that it will be impossible, by resorting to one of them, to escape from the rules that govern the other. The *Charter* therefore requires members of the Organization either to join the IMF or to enter into a special exchange agreement, embodying similar obligations, with the ITO (24-6). (The only exception to this requirement applies to Liberia, which uses American dollars and imposes no exchange controls.) The *Charter* further provides that members shall not, by exchange action, frustrate the intent of its rules governing Q.R. nor, by trade action, the intent of the *Articles of Agreement* of the Fund (23-4). This does not prevent them from imposing exchange controls permitted by the Fund or

from employing Q.R. for the purpose of enforcing such controls (23-3).

If the provisions of these articles are to be administered effectively, there must be close cooperation between the IMF and the ITO. The *Charter* accordingly envisages arrangements that will enable the two agencies to pursue a coordinated policy. It directs the Organization to consult the Fund with respect to all financial questions arising in the course of its activities (24-1, 3). It requires the Organization to accept the findings and determinations of the Fund on the financial aspects of any case in which a decision must be made (24-2).

The various consultations in which the IMF is expected to participate may well lead to the adoption of corrective measures more fundamental in character than exchange control or Q.R. Both of these devices are regarded as temporary expedients, designed to cope with the imbalance encountered during a period of emergency. If imbalance persists, however, recommendations calling for adjustments in the values of currencies and in domestic economic policies are likely to be made. Agreement on such measures should curtail the tenure of Q.R.