

## CHAPTER 7

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### INVISIBLE TARIFFS

IMPORTS may be restricted by methods that are direct and open, such as tariffs and quotas. They may also be restricted by indirection through internal taxes that are imposed at higher rates on imported than on domestic goods, through regulations that make it more difficult to sell imported than domestic goods, or through laws that require the mixture of domestic with imported raw materials in the production of manufactured goods. And they may be restricted by concealment through the methods that are employed in the administration of tariff laws.

The duty that must be paid on an imported product may be raised by shifting the product from a classification that bears a lower rate to one that bears a higher rate. Where the amount of a duty depends upon the value of a product, it may also be increased by employing a method of valuation that will result in a higher value. Value may be arbitrary or fictitious; it may be established either by pricing imported goods or by pricing comparable domestic goods; it may be determined either at the point of exportation or at the point of importation; it may be fixed at prices that apply to quantities smaller than those actually imported; it may include taxes that the exporting country imposes on goods when they are consumed at home but not when they are sold abroad. The method of valuation may differ from product to product and from time to time; traders may thus find it difficult to determine applicable amounts of duty; goods may be tied up for long periods while their valuation is in dispute; trade is accordingly restrained. Values may be boosted in order to afford increased protection against foreign competition; they may be raised for the sole purpose of maximizing customs revenues; in either case,

the outcome is the same: imports are subjected to restrictions that are greater than those revealed by tariff rates.

Customs administration may interfere with trade in many other ways. Goods in transit through a country may be required to pay taxes that increase their cost; their movement may be unreasonably delayed. Anti-dumping duties may be imposed at levels higher than would be necessary to offset dumping by foreign sellers. Customs regulations may be so framed, by design or by accident, as to increase the costs of importers and delay the entry of imported goods. Incidental fees and charges may greatly exceed the value of the services for which they are imposed. Unnecessary forms and documents may be required. Inconvenient and expensive methods of applying marks of origin may be prescribed. Traders may be entangled in red tape, subjected to rules that are changed without prior notice, afforded no opportunity to consult with administrative officials, and provided with no means of appealing from the decisions that are handed down. The import trade may thus be rendered unattractive and the volume of imports accordingly curtailed.

In any of these ways, negotiated reductions in tariff rates may, in effect, be canceled and agreements that would otherwise have operated to expand trade may be set at naught. It is necessary, therefore, to bring such indirect and hidden methods of restriction under international control. The *Charter* provides, accordingly, that these devices will henceforth be governed by a common code of detailed rules. Standing alone, these rules are so comprehensive and so important as to constitute an international convention in themselves. In the context of the *Charter*, they are essential to the achievement of its broader purposes.

#### INTERNAL TAXATION AND REGULATION

The *Charter* establishes the basic principle that internal taxes and regulations should not be used as a method of providing protection against foreign competition. Members of the ITO must not impose heavier taxes on imported goods than on like domestic goods. They must not subject the sale of imported goods to regulations more burdensome than those applying to the sale of domestic goods. They must not require domestic processors to use a fixed amount or proportion of domestic raw materials (18).

The exceptions to these rules are few in number and clear in purpose. In conformity with the principle that import duties rather than differential taxes should be employed to protect domestic industries, a duty may be substituted for the discriminatory element in such a tax. Where such a substitution is prevented by the terms of a trade agreement, the tax may be continued until the agreement is modified; then it must be displaced (18-3). None of the rules applies to the governmental procurement of goods for public use or prevents the payment of domestic subsidies (18-8). Mixing regulations already in existence are allowed to stand (18-6). Playing time on motion picture screens may be reserved for domestic films (19).

Of these main exceptions, only the last two are important. Mixing regulations are highly effective as a method of restricting trade. But they are not as yet in wide use. The general rule laid down in the *Charter* will prevent their extension. The exception will permit the United States to maintain its requirement that manufacturers of rubber products use synthetic substitutes along with imported crude materials. The maintenance of synthetic production is essential to our national security; required use is believed to be the only way in which this production can be insured. In this case, the exception for existing mixing regulations would appear to be justifiable; in others it may be less so. In all cases, such regulations may not be made more restrictive and they are subject to possible liberalization in the course of trade negotiations. The *Charter* provides, further, that materials imported for mixing may not be allocated among sources of supply.

It was argued by certain delegations at Havana that wartime systems of price control had been so administered as to discriminate against producers of imported goods and it was therefore proposed that the *Charter* establish a cost-plus rule for import price controls. This proposal was rejected, but the *Charter* was amended to require members imposing such controls to "take account of the interests of exporting member countries with a view to avoiding to the fullest practicable extent such prejudicial effects" (18-9).

#### MOTION PICTURES

It has been estimated that imported motion picture films have been subjected to some seventeen different forms of discriminatory

taxation and regulation by countries outside the United States. Article 18 of the *Charter* will forbid discriminatory internal taxes and Article 19 will outlaw all forms of internal quantitative discrimination but one. Thus members of the ITO will be permitted to reserve a fixed share of playing time on domestic screens for films produced domestically. This authorization is based upon a recognition of the fact that motion picture production is as much entitled to protection against foreign competition as any other industry and that such protection, in this case, cannot be provided effectively by imposing duties on imported rolls of film. The screen quota, therefore, has been accepted as the counterpart of a tariff and every other method of protection (except customs duties) has been banned. The method of restriction, as in the case of tariffs, is thus made visible and negotiable.

The height of a domestic screen quota is made subject to reduction through trade negotiations. Playing time not included within such a quota must be kept open to free competition; quotas are not to be established for films produced abroad. The only exception to the latter rule, though drafted in general terms, was designed to permit Czechoslovakia to maintain an existing quota for Russian films (19-c). This quota had never been filled and there was little prospect that it could be filled.

The article concerning motion pictures is the only one in the *Charter* which safeguards the export markets of a particular industry. Since this country is by far the largest exporter of motion picture films, its principal benefits will accrue to the United States. When made effective, through ratification of the *Charter*, for all members of the ITO, it should afford a sound foundation for the continued operation of the American industry.

#### CUSTOMS ADMINISTRATION

Members of the ITO will work toward standardization of the methods of valuation that are used where customs duties are related to the value of imported goods. Pending the general adoption of such standards, the *Charter* establishes certain principles of valuation. The most important of these is the principle that value for customs purposes should be actual rather than arbitrary or fictitious and should be ascertained by pricing imported rather than domestic goods. The

precise definition of actual value is to be worked out in the future by the ITO; as a general principle, however, such value is to be taken as the price at which goods, either in the quantities contained in a particular shipment or in those customarily imported, are sold, under fully competitive conditions, in the ordinary course of trade. Taxes which exporting countries impose on internal consumption but not on exports are not to be included in customs valuations by importing countries. Where prices expressed in the currency of one country must be converted into that of another, the *Charter* prescribes the methods of conversion that shall be used. Each member of the ITO will undertake to give effect to these principles at the earliest practicable date. Upon the request of any other member, it will review the operation of its laws and regulations for fixing customs values. The Organization may formulate and recommend suitable methods of valuation and may request its members to report upon their progress toward conformity with the *Charter's* principles. It is recognized, finally, that methods of valuation should be stable and should be given sufficient publicity to enable traders to estimate the values on which duties are based (35).

Freedom of transit is assured for goods en route from one country to another across the territory of a third. Such traffic is to be permitted to move on the most convenient routes. It may not be burdened by customs or special transit duties, handicapped by unreasonable charges or regulations, or impeded by unnecessary delays. Discrimination based upon the ownership, origin, or destination of goods in transit or upon the ownership or national flag of carriers is banned (33). The principle of freedom of transit has particular significance for land-locked countries and, in the interest of such countries, members are further required to cooperate in simplifying regulations affecting traffic in transit and in assuring the equitable use of facilities required for such traffic (33-6). In addition to assuring freedom of transit through third countries, the *Charter* also forbids importing countries to discriminate against goods that have passed through a third country. But there is one exception to this rule: in accordance with the practice of certain countries of the British Commonwealth, regulations denying preferential rates of duty to goods that have not been shipped directly may be retained (33-7).

While condemning the practice of dumping, the *Charter* limits

the conditions under which anti-dumping and countervailing duties may be imposed and the extent to which they may be applied. It lays down the rule that no such duties may be imposed unless the dumping or subsidization involved is such as to cause or threaten material injury to an existing industry or to retard materially the establishment of a new industry. It prohibits the application of both types of duty in the same case of dumping or subsidization. Such duties are not to be imposed on the ground that taxes on domestic consumption have not been applied to exported goods or to be used to offset subsidies that are incidental to a price stabilization scheme, such as that in use in Australia, which involves the exportation of goods at prices that are sometimes higher and sometimes lower than those prevailing in world markets. The *Charter* defines dumping, prescribes a method of measuring the margin of dumping, and forbids members of the ITO to impose anti-dumping duties that exceed this margin. It also forbids them to impose countervailing duties at levels that are more than adequate to offset foreign bounties or subsidies. The *Charter* thus establishes the principle that anti-dumping and countervailing duties must be confined to the purpose of offsetting predatory price cutting and may not be used to prevent normal competition in international trade (34).

The Charter establishes the principles that customs formalities should be minimized, documentation requirements simplified, and incidental fees and charges reduced in number and limited to the value of the services for which they are imposed. Members of the ITO will undertake to give effect to these principles at the earliest practicable date and to review the operation of existing requirements upon request. The ITO may ask them to report upon their progress toward this objective and may recommend measures designed to simplify customs formalities and eliminate unnecessary customs requirements. The *Charter* condemns the use of tariff classifications based upon place names as a means of discriminating against the goods of any member country (36).

Where regulations that require the marking of imported goods are unnecessary, they will be dropped. Where they are retained, they must not prescribe methods of marking that would damage imported products, reduce their value, or increase their cost. They must permit compliance at a time and in a manner that involves the least

possible interference with the flow of trade. They must not be so applied as to discriminate among exporting countries. And they must not impose unreasonable penalties for failure to comply. Members will cooperate in protecting geographic trade names by preventing misrepresentation through deceptive labelling (37). This is already done, under the rules of the Federal Trade Commission, in the United States.

The *Charter* exempts from its provisions regulations adopted to protect human, animal, or plant life or health, in so far as they are necessary for this purpose. But it forbids the use of such measures “in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member countries . . . or a disguised restriction on international trade . . .” (45-1). Here, as in the case of other measures affecting imports, each member must “accord sympathetic consideration to . . . such representations as may be made by any other Member” with respect to its regulations and must “afford adequate opportunity for consultation” where differences arise (41).

The *Charter* requires the prompt publication of all agreements, laws, administrative regulations, general rulings, and judicial decisions affecting international trade. It forbids the enforcement of new or increased restrictions before they have been made public. It requires the provision of suitable facilities for consultation with administrative authorities. It further requires the maintenance or institution of independent tribunals or procedures for the review and possible modification of administrative decisions relating to customs matters (38). Traders are thus assured of access to essential information and protection against arbitrary action.

Members must publish and report periodically to the ITO statistics of exports, imports, subsidy payments, and customs revenues. The Organization will collect, analyze, and publish trade statistics and may recommend methods by which such statistics may be improved. It may also make studies and recommendations concerning the possible standardization of tariff classifications and the adoption of common nomenclatures, terms, and forms used in international trade (39).