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RECIPROCAL TRADE AGREEMENTS

APRIL 26 (calendar day, MAY 2), 1934.—Ordered to be printed

Mr. HARRISON, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 8687]

The Committee on Finance, to whom was referred the bill (H.R. 8687) to amend the Tariff Act of 1930, having considered the same, report favorably thereon with amendments, and recommend that the bill, as amended, do pass.

STATEMENT

The bill was quite fully discussed both from an economic and legal standpoint in the majority report of the House Committee on Ways and Means. For the information of the Senate that report is incorporated and made a part of this report. However, the committee adopted a number of amendments to the bill, an explanation of which follows:

In order to emphasize the emergency character of the bill, the first amendment adopted by the committee inserts in subsection (a) after the words "as a means of assisting" the words "in the present emergency", so as to make this language applicable to all the objectives set forth in that part of subsection (a) enclosed within the parentheses. Correspondingly, the words "in the present emergency" were deleted from the clause "in increasing the purchasing power of the American public in the present emergency".

The committee has inserted the words "as a fact" following the words in subsection (a) "the President, whenever he finds". This is to make clear that Congress under the proposed bill is establishing a policy and directing the Executive to act in accordance with the congressional policy only when he finds as a fact that existing duties

or other import restrictions are unduly burdening and restricting the foreign trade of the United States. In the same provision, to the words "existing duties or other import restrictions" the words "of the United States or any foreign country" have been added to clarify the meaning.

The House bill makes the action of the President dependent upon his finding either that existing duties or import restrictions are unduly burdening and restricting the foreign trade of the United States or that such action will promote the purpose set forth. In order to require a finding by the President on both of these points, the word "or" has been changed to "and".

In order to clarify and make more precise the language of the bill, in the concluding part of the first paragraph of section 1 the committee changed the words "use of the powers herein conferred," to "means hereinafter specified,".

The committee amended the exception relating to Cuba so as to read:

(b) Nothing in this section shall be construed to prevent the application, with respect to rates of duty established under this section pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an exclusive agreement with Cuba concluded under this section, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba: *Provided*, That the duties payable on such an article shall in no case be increased or decreased by more than 50 per centum of the duties now payable thereon.

During the debates in the House, a question was raised whether or not changes in duties pursuant to an agreement made with Cuba under the provisions of the bill would be subject to the 50-percent limitation provided in the bill. The committee adopted the above amendment to clarify this point and to make the provision relating to Cuba more explicit.

The committee changed the concluding sentence of section 2 (a), relating to the third paragraph of section 311 of the Tariff Act of 1930, to read as follows:

The third paragraph of section 311 of the Tariff Act of 1930 shall apply to any agreement concluded pursuant to this Act to the extent only that such agreement assures to the United States a rate of duty on wheat flour produced in the United States which is preferential in respect to the lowest rate of duty imposed by the country with which such agreement has been concluded on like flour produced in any other country; and upon the withdrawal of wheat flour from bonded manufacturing warehouses for exportation to the country with which such agreement has been concluded, there shall be levied, collected, and paid on the imported wheat used, a duty equal to the amount of such assured preference.

The purpose of the provision adopted by the House was to make the third paragraph of section 311 of the tariff act applicable only when, as in the case of Cuba, the foreign governments with which agreements are concluded grant exclusive preferences to flour produced in the United States. The changes made by the committee are designed to satisfy certain doubts expressed by some of the milling interests as to whether the language of the provision adopted by the House is sufficiently explicit to assure the accomplishment of the object in view. The amended text is designed to make it clear that the third paragraph of section 311 of the Tariff Act of 1930 will be ap-

plicable to any agreement concluded under the bill only to the extent that the foreign government with which such agreement has been concluded undertakes in such agreement to grant a preference to flour produced in the United States as compared with flour produced in any other country. In other words, if the agreement with the foreign government provides merely for a reduction in the duty on American flour without providing that such flour shall enjoy a lower rate of duty than that at any time applicable to flour produced in other countries, the third paragraph of section 311 of the Tariff Act of 1930 would not be applicable.

The House, in passing H.R. 8687, adopted an amendment in order to limit to 3 years the authority of the President to enter into foreign trade agreements under the act. The language adopted, however, provides that all the provisions of the act "shall terminate three years from the date of its enactment". Certain trade agreements made by the President during this 3-year period may, if of proven benefit to the United States, be continued in force beyond this period (although of course each such agreement is subject to termination on the expiration of not more than 3 years). It is important that various provisions of the bill relating to such agreements be continued in force as long as the agreements remain in force. For example, under the language of the House bill, the provision that reduced duties established under the agreements shall apply to imports from all countries might cease to be applicable after the expiration of the 3-year period. The result might be discriminations against countries other than those with which agreements had been concluded, in violation of existing treaty obligations of the United States in regard to the granting of most-favored-nation treatment. Similarly, the provisions of section 336 might become applicable to articles covered by trade agreements, and if increases in the duties on such articles were made under that section the agreements would be violated. Again, the provisions of the third paragraph of section 311 of the tariff act might become applicable with respect to such agreements. For these reasons, the committee substituted for subsection (c) of of section 2 the following language:

(c) The authority of the President to enter into foreign trade agreements under section 1 of this act shall terminate on the expiration of three years from the date of the enactment of this act.

In order to protect American producers and manufacturers, who may fear hasty or ill-considered action without their knowledge and without their being given a chance to present their views, the committee inserted the following new section:

SEC. 4. Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provisions of this act public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe; and before concluding such agreement the President shall seek information and advice with respect thereto from the United States Tariff Commission, the Departments of State, Agriculture, and Commerce, and from such other sources as he may deem appropriate.

Following is the majority report of the House Committee on Ways and Means:

HOUSE REPORT NO. 1000, SEVENTY-THIRD CONGRESS, SECOND SESSION

The Committee on Ways and Means, to which was referred the bill (H.R. 8687) to amend the Tariff Act of 1930, having had the same under consideration, reports it back to the House and recommends that the bill do pass.

In making this recommendation the Committee on Ways and Means would emphasize that this bill, although designed to meet an emergency, is not a compromise with emergency. It is based upon thoroughly sound principles of national policy.

SHRINKAGE OF WORLD TRADE

During recent years the world has been experiencing a period of acute economic distress and suffering, accompanied by, and to a large extent resulting from, an alarming shrinkage of world trade. The President, addressing the Congress, speaking of the decline of world trade, has said:

> Measured in terms of the volume of goods in 1933, it has been reduced to approximately 70 percent of its 1929 volume; measured in terms of dollars, it has fallen to 35 percent.

As stated by the Secretary of State in his testimony before the committee on March 8, 1934:

> According to reliable estimates, if world trade had gone forward with the annual ratio of gain existing before the war, the nations during the intervening years would have had some $275,000,000,000 more than they have actually enjoyed. And according to these estimates, if world trade had thus progressed there would be today an annual international commerce of near $50,000,000,000, instead of the pitiable figures of less than $12,000,000,000 for 1933.

International trade has steadily grown less each year since 1929. The reduction of international trade in the amount of $40,000,000,000 means the reduction of world production by $40,000,000,000, and this means a reduction in consumption of a like amount, and this means correspondingly lower standards of living.

SHRINKAGE OF THE UNITED STATES TRADE

The total exports of the United States fell from $5,241,000,000 in 1929 to $1,675,000,000 in 1933, while the imports fell from $4,399,000,000 in 1929 to $1,449,000,000 in 1933. The decline in American commerce is shown in the attached table:

United States foreign trade

1925-33

[Millions of dollars]

Year or month	Exports	Imports	Year or month	Exports	Imports
1925	4,910	4,227	1930	3,843	3,061
1926	4,809	4,431	1931	2,424	2,091
1927	4,865	4,185	1932	1,611	1,323
1928	5,128	4,091	1933	1,675	1,449
1929	5,241	4,399			
Monthly, January 1933 to date					
1933			August	129.3	155.0
January	118.6	96.0	September	157.5	146.7
February	99.4	83.8	October	191.7	160.9
March	106.3	94.9	November	181.3	128.5
April	103.1	88.4	December	189.8	133.5
May	111.9	106.9			
June	117.5	122.3	1934		
July	141.7	143.0	January	169.5	135.0

The seriousness of the existing situation has been recently commented upon in World Trade in 1933, a statement given out by the League Information Section:

> The total volume of goods exchanged between countries has diminished by about 30 percent in comparison with 1929. This aspect of the condition of world trade is especially serious. Previous crises never showed such a shrinkage in the volume of trade; on the contrary a fall in prices used to give rise speedily in the volume of trade which made it possible for the situation to improve.

Many economic and monetary causes have contributed to this result. Primary among these is the almost universal existence of high trade barriers built up in a frenzied effort to gain a so-called "favorable balance of trade" by shutting out foreign goods in disregard of the inevitable effect upon those branches of production which depend upon a world market. Most of the nations have erected ever mounting tariff barriers; they have imposed quantitative import restrictions; they have created state monopolies; they have established governmental control over foreign exchange which serves to limit the supply of funds made available for foreign trade. The difficulties resulting from such a network of barriers can be successfully overcome only by agreements between Governments.

A DIMINISHING SHARE OF DIMINISHING TRADE

The outstanding fact is that the United States, competing with other nations for this diminishing trade, has not been able to hold its own. According to the figures based on money values taken from the League's Review of World Trade, 1932, and the Monthly Bulletin of Statistics, the American share of the import trade of the world in 1929 amounted to 12.19 percent of the imports of the world and 15.61 percent of the exports of the world. In 1932 the American share had fallen to 9.58 percent of the imports of the world and 12.39 percent of the exports. In other words, whereas in 1929 the United States enjoyed 13.83 percent of the total trade of the world, in 1932 its share had fallen to 10.92 percent. The proportion which the United States lost, other countries, of course, gained. This is made clear by the following table:

Percentage of world trade accruing to each of the 11 leading countries

Country	Imports				Exports				Total	
	1929	1930	1931	1932	1929	1930	1931	1932	1929	1932
World total	100	100	100	100	100	100	100	100	100	100
United Kingdom	15.19	16.02	17.18	16.43	10.74	10.48	9.36	10.06	13.04	13.38
United States of America	12.19	10.71	10.02	9.58	15.61	14.27	12.57	12.39	13.83	10.92
Germany	9.00	8.50	7.68	7.98	9.72	10.82	12.08	10.70	9.34	9.29
France	6.41	7.08	7.93	8.44	5.95	6.34	6.30	6.08	6.19	7.31
Canada	3.65	3.47	2.92	2.87	3.71	3.42	3.28	3.83	3.68	3.33
Netherlands	3.11	3.34	3.65	3.77	2.43	2.61	2.79	2.68	2.78	3.25
Belgium	2.77	2.96	3.17	3.26	2.68	2.74	3.40	3.23	2.73	3.24
Japan	2.81	2.56	2.83	2.84	2.93	2.67	2.89	3.05	2.87	2.94
Italy	3.20	3.14	2.94	3.05	2.42	2.41	2.79	2.73	2.83	2.90
India	2.54	2.33	2.23	2.53	3.54	3.44	2.93	2.79	3.02	2.65
Russia	1.27	1.87	2.73	2.59	1.46	2.01	2.20	2.28	1.36	2.44

World trade and United States international trade

[In millions of dollars]

	Imports					Exports					Total		
	1929	1930	1931	1932	1933 [1]	1929	1930	1931	1932	1933 [1]	1929	1932	1933 [1]
World	35,606	29,083	20,847	13,885	11,937	33,035	26,492	18,922	12,726	11,119	68,641	26,611	23,056
United States	4,339	3,114	2,068	1,330	1,122	5,157	3,781	2,378	1,577	1,149	9,496	2,907	2,270

[1] Provisional figures.

An investigation of the proportion of United States exports and imports with relation to Latin-American countries also reveals the same tendency toward diminution of American trade in proportion to that of other countries. The diminishing share of United States products in the import trade of Argentina, Brazil, Chile, Colombia, and Mexico is shown by the following table:

Summary

Proportion of imports, 1926–33 * into—

- Argentina:
  - From United States—decreased.
  - From United Kingdom—increased.
- Brazil:
  - From United States—decreased.
  - From United Kingdom—increased.
- Chile:
  - From United States—decreased.
  - From United Kingdom—decreased.
  - From France—increased.
  - From Peru—increased.
- Colombia:
  - From United States—decreased.
  - From United Kingdom—increased.
  - From Germany—increased.
- Mexico:
  - From United States—decreased.
  - From Germany—increased.

Proportion of imports from principal countries

INTO ARGENTINA

	1926	1932	1933
	Percent	*Percent*	*Percent*
United States	24.7	13.6	12.6
United Kingdom	19.3	20.3	21.4
Germany	11.4	9.7	10.7
Italy	8.9	9.2	9.1
Brazil	5.1	5.6	5.6
France	7.4	5.1	5.1
Japan	[1] 0.6	1.6	2.3

INTO BRAZIL

United States	20.3	30.1	[2] 20.2
United Kingdom	18.9	19.2	[2] 19.9
Germany	12.6	9.0	[2] 11.7
Argentina	9.8	7.4	[2] 13.0
France	6.4	5.1	[2] 5.6
Italy	3.8	4.1	[2] 4.1

INTO CHILE

United States	32.7	22.8	22.5
Germany	12.1	14.9	11.5
Great Britian	17.2	13.0	12.1
Peru	6.4	13.0	14.3
France	4.4	4.7	6.4

INTO COLOMBIA

United States	47.9	[3] 45.9	[3] 36.6
Great Britain	16.6	[3] 18.2	[3] 21.4
Germany	12.8	[3] 13.9	[3] 16.5
France	6.1	[3] 4.2	[3] 4.9

INTO MEXICO

United States	70.5	63.5	[3] 62.3
Germany	7.4	11.6	[3] 12.2
Great Britain	7.4	7.7	[3] 7.5
France	4.6	5.5	[3] 5.6

[1] 1927—not shown separately in 1926.
[2] 9 months.
[3] January–June.

* The figures are based on money value. They are taken from U.S. Commerce yearbooks.

EQUIPMENT FOR TRADE RESTORATION NEEDED

If the United States is to compete successfully with other countries to regain a fair share of foreign trade, it is necessary that the United States should create machinery whereby it can bargain successfully for such trade. As the President said in his message to the Congress:

> Other governments are to an ever increasing extent winning their share of international trade by negotiated, reciprocal trade agreements. If American agricultural and industrial interests are to retain their deserved place in this trade, the American Government must be in a position to bargain for that place with other governments by rapid and decisive negotiation based upon a carefully considered program, and to grant with discernment corresponding opportunities in the American market for foreign products supplementary to our own.
>
> If the American Government is not in a position to make fair offers for fair opportunities, its trade will be superseded. If it is not in a position at a given moment rapidly to alter the terms on which it is willing to deal with other countries, it cannot adequately protect its trade against discriminations and against bargains injurious to its interests. Furthermore, a promise to which prompt effect cannot be given is not an inducement which can pass current at par in commercial negotiations.
>
> For this reason any smaller degree of authority in the hands of the Executive would be ineffective. The executive branches of virtually all other important trading countries already possess some such power.

In most European countries agreements can be made by the executive and put into force at once. In some countries no parliamentary ratification of any kind is necessary. In the majority of countries parliamentary ratification is necessary, but the agreements can be made operative at once and parliamentary ratification is largely a matter of form. In most important countries tariff changes can be made practically overnight. In France the Tariff Committee of the Chamber recently adopted a project of law which until the opening of their session in 1935, would give to the Government authority to modify the customs tariff by decree, modification to be subject to subsequent ratification of Parliament. The authority, if granted, will afford a high degree of flexibility useful in commercial bargaining. In Japan a bill has recently been introduced into the Diet empowering the executive to increase or reduce tariff rates and prohibit or restrict exports or imports.

The situation of other countries is described in the following statement incorporated in the record of the hearings on the bill during Mr. Sayre's testimony, March 13, 1934:

> Practically all of the countries of continental Europe, as well as England and the major dominions, and a few of the countries of Latin America, have authority vested in the executive branch of the government for negotiating duties below those in the general or maximum tariff schedules, in the course of reciprocal negotiations with other countries.
>
> In a few cases (notably, France, Spain, Portugal, Canada, and South Africa), the Parliament has actually established in advance the minimum scale of duties, part or all of which may be granted to other countries by agreements, although in practice rates below the so-called "minimum" have sometimes been granted by France and Spain. The more common practice is to start with a general tariff and authorize the executive branch of the government to grant reductions in the course of negotiations, without prescribing in advance the amount of the reductions, such rates established by treaty then constituting the second or conventional column of the country's tariff.
>
> In a limited number of countries the executive has the authority to make definitely effective the reductions granted in the course of reciprocal negotiations, without requiring the approval of the Parliament. (This is the case principally

in Canada, British India, with Hungary requiring simple notification to the Parliament. In England, reductions made in the course of agreements may become provisionally effective, subject to the agreement being placed before Parliament, which has 28 legislative days within which to indicate disapproval.)

In the majority of cases, such treaty reductions are not to be permanently operative until the agreements have been approved by the Parliaments, or have been notified to them. In practice, however, the parliamentary approval is often a perfunctory matter, and even in those countries where it is the practice to have parliamentary discussion, and possible criticism of some of the terms of the agreements, it is seldom that they are not ratified essentially as negotiated. In many cases, the reductions embodied in tariff agreements are put into operation, at least provisionally, on a date set by the executive, without waiting for parliamentary action. This practice of taking ultimate parliamentary approval practically for granted is found particularly in those countries having a "responsible" cabinet form of government (mainly in Europe), or where the governmental structure is such that the general tariff authority is often vested in the hands of the executive (as in certain countries of Latin America).

Summing up the situation, it may be said, as a practical matter, that, in a great majority of the countries following the practice of making reciprocal tariff agreements, the decisions as to which duties are to be reduced and how much are made by the executive branch of the government, sometimes within limits set by the legislature, but without actually requiring in most cases more than nominal action, if any, on the part of the legislature before the duty reductions in these reciprocal agreements are made operative.

In order to meet the difficulties raised by existing tariff and trade barriers throughout the world, foreign countries are resorting with increasing frequency to the negotiation of commercial agreements based upon tariff bargaining. Since January 1, 1933, no fewer than 68 of these bargaining agreements have been made, covering customs concessions or most-favored-nation treatment, or both. A list of these is shown in the following table:

Commercial agreements concluded and reported since Jan. 1, 1933

[Not including renewals and extensions]

Country	Customs concession only	Most-favored nation only	Customs concession and most-favored nation	Total
Argentina	Chile (e. 10/21/33),[1] United Kingdom.	Netherlands (34 C.R. 10/156),[2] Belgium (34 C.R. 10/156).	Brazil	5
Australia	New Zealand (34 C.R. 5/76).			1
Austria	Hungary (e. 1/1/33), Sweden (34 C.R. 10/156).	Canada (34 C.R. 3/44)	Poland	4
Belgium	Poland	Argentina	New Zealand (34 C.R. 7/107).	3
Brazil		Turkey, Latvia, Greece, Yugoslavia, Portugal, Estonia, Syria, and Lebanon.	Argentine, Uruguay	9
Bulgaria			Germany	1
Canada		Austria, Germany	France (restricted)	3
Chile	Argentina, Cuba	Czechoslovakia	Germany (34 C.R. 8/124).	4
Costa Rica	France	Germany, Italy (34 C.R. 7/108).	France (most-favored-nation, by Costa Rica only).	4
Cuba	Chile			1
Czechoslovakia	Switzerland (34 C.R. 8/124), Germany (34 C.R. 4/58).	Poland (34 C.R. 3/45), Chile.		4
Denmark	Germany		United Kingdom	2
Estonia	United Kingdom, France.	Brazil	Spain (34 C.R. 7/108)	4
Finland	France, United Kingdom.	United States (34 C.R. 8/126).		3
France	Switzerland, Spain, Costa Rica, Norway, Russia, Sweden, Estonia, Italy, Finland.	Turkey (restricted)	Canada (restricted)	11

[1] e. Signifies date on which agreement became effective.
[2] C.R. refers to *Commerce Reports;* thus 34 C.R. 10/156 refers to *Commerce Reports* (1934) no. 10, p. 156, where this agreement is reported.

Commercial agreements concluded and reported since Jan. 1, 1933—Continued

[Not including renewals and extensions]

County	Customs concession only	Most-favored nation only	Customs concession and most-favored nation	Total
Germany	Netherlands, United Kingdom, Spain, Switzerland, Czechoslovakia, Poland, Denmark, Italy.	Uruguay, Canada, Costa Rica.	Yugoslavia (e. 8/1 and 9/24/33), Bulgaria, Chile.	14
Greece		Brazil		1
Hungary	Austria			1
Iceland			United Kingdom	1
India			Japan	1
Iraq		Norway		1
Italy	France, Germany (34 CR 6/89).	Russia, Costa Rica, Rumania (34 CR 5/78).		5
Japan			India	1
Latvia	United Kingdom	Brazil	Lithuania	3
Lithuania			Latvia	1
Netherlands	Germany, Poland (34 CR 3/46).	Argentina		3
New Zealand	Australia		Belgium	2
Norway	United Kingdon, France	Iraq		3
Persia		Poland (34 CR 4/60)		1
Poland	Belgium, Germany, Netherlands.	Persia, Czechoslovakia, United States.	Austria	7
Portugal		Brazil		1
Rumania	Switzerland	Italy		2
Russia	France (34 CR 9/142)	Italy		2
Saudi Arabia		United States		1
Spain	France, Germany		Estonia	3
Sweden	United Kingdom, France, Austria.			3
Switzerland	France, Rumania, Germany, Czechoslovakia.			4
Syria and Lebanon.		Brazil		1
Turkey		Brazil, France (restricted).		2
United Kingdom.	Finland, Latvia, Argentina, Estonia, Germany, Norway, Sweden.		Denmark, Iceland	8
United States		Poland, Saudi Arabia, Finland.		3
Uruguay		Germany	Brazil	2
Yugoslavia		Brazil	Germany	2

CONSTITUTIONALITY OF THE LEGISLATION

The committee has given particular attention to questions of constitutionality presented by the proposed bill, particularly in view of arguments advanced during the hearing to the effect that it proposes the delegation of too broad a discretionary power to the President. As a matter of fact, the proposed bill goes no further than many previous enactments of the Congress; in fact, it follows a current of legislation enacted from the earliest days of our history.

EARLY ENACTMENTS

The first problems concerning commerce which confronted the Congress of the United States related to import duties and tonnage duties. As early as 1794, when many of the framers of the Constitution were still active in public affairs, Congress passed an act delegating to the President the power not merely to regulate or to fix rates affecting commerce but actually to prevent altogether the exportation of goods from the United States.

In the act approved June 4, 1794, it was provided that—

> the President of the United States be, and he hereby is authorized and empowered, whenever, in his opinion, the public safety shall so require, to lay an embargo

on all ships and vessels in the ports of the United States, or upon the ships and vessels of the United States, or the ships and vessels of any foreign nation, under such regulations as the circumstances of the case may require, and to continue or revoke the same, whenever he shall think proper.

In this act the largest kind of power was thus delegated to the President to be exercised "whenever in his opinion the public safety shall so require". The yardstick for determining the exercise of the President's power was thus of a most indefinite character—far wider than that proposed under H.R. 8687.

Under succeeding acts passed to regulate commerce in the early days, Congress similarly delegated to the President large power over commerce. In the act approved June 13, 1798, to suspend commercial intercourse between the United States and France, it was provided that if, prior to the following session of Congress, the Government of France should refrain from aggressions, depredations, and hostilities against American vessels—

Then and thereupon it shall be lawful for the President of the United States, being well ascertained of the premises, to remit and discontinue the prohibitions and restraints hereby enacted and declared; and he shall be and is hereby authorized to make proclamation thereof accordingly.

Similarly Congress delegated to the President considerable power over commerce in the acts of 1799, of 1806, of 1807, of 1809, and of 1810. Under the latter act it was provided that if either Great Britain or France should cease to violate the neutral commerce of the United States the President was empowered so to declare by a proclamation and thus to open the ports of the United States to the commerce of such country.

Under this act, the President issued on November 2, 1810, a proclamation, declaring that France had ceased to violate the neutral commerce of the United States, and reviving the nonintercourse act of March 1, 1809, as to Great Britain. In the case of the *Brigg Aurora* v. *The United States* (1813; 7 Cr. 382), it was contended that "Congress could not transfer the legislative power to the President." The Supreme Court, nevertheless, upheld the constitutionality of the act by which the President was delegated this power.

In the early days of the nineteenth century because of the discriminations made against American commerce by foreign nations and because of the British navigation acts and other restrictive measures enacted by other countries, it became an accepted policy among the nations of that day to levy discriminatory duties against foreign ships entering their ports. Matters went from bad to worse. The result was a kind of warfare of tonnage duties which reminds one of the international commercial warfare going on today.

In order to put an end to such disastrous warfare, the United States Congress passed an act, approved March 3, 1815, which provided for the repeal of the discriminating tonnage duties between foreign vessels and vessels of the United States—

whenever the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage of the United States, have been abolished.

Similar statutes were passed in 1824 and in 1828 and these were substantially preserved in section 4228 of the Revised Statutes. In execution of these several acts, proclamations were issued by President Adams, by President Jackson, by President Polk, by President Fill-

more, by President Buchanan, by President Lincoln, by President Johnson, by President Grant, and by President Hayes.

Irrespective of party and irrespective of political affiliations our Presidents have acted under and in pursuance of this authority. Nor did the exercise of authority stop there. Pursuant to section 4228 of the Revised Statutes, executive agreements were entered into providing for reciprocal abolition of discriminating duties on imports; and these agreements were brought into force by proclamations issued by the President. These agreements were not submitted to the Senate.

TARIFF ACT OF 1890

Similarly, tariff bargaining by executive agreement is a practice which has been followed under various Presidents. In the McKinley Tariff Act of 1890, section 3 Provided that certain specified commodities should be admitted free of duty, but that the President should be authorized to impose specified rates of duty against nations charging "unequal and unreasonable" duties against United States commodities.

In the words of the act—

> whenever and so often as the President shall be satisfied that the government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act.

And so forth. Following the passage of the act, Secretary Blaine began the negotiation of a series of agreements; and between January 31, 1891, and May 26, 1892, 10 such reciprocal agreements were concluded. The constitutionality of the act of 1890 was attacked in the case of *Field* v. *Clark* (1892; 143 U.S. 649, 681) on the ground that the Congress had delegated to the President both legislative and treaty-making powers.

The Supreme Court of the United States, nevertheless, sustained the constitutionality of the act. Mr. Justice Harlan speaking for the Court stated that—

> the court is of opinion that the third section of the act of October 1, 1890, is not liable to the objection that it transfers legislative and treaty-making power to the President.

TARIFF ACT OF 1897

Under the Dingley Act of 1897, section 3 authorized the President to enter into negotiations for commercial agreements. Section 3 provides that—

> Whenever the government of any country, or colony, producing and exporting to the United States the above-mentioned articles, or any of them, shall enter into a commercial agreement with the United States, or make concessions in favor of the products, or manufactures thereof, which, in the judgment of the President, shall be reciprocal and equivalent, he shall be, and he is hereby, authorized and empowered to suspend, during the time of such agreement or concession, by proclamation to that effect, the imposition and collection of the duties mentioned in this act—

And so forth; and it is further provided, as in the act of 1890, that—

> with a view to secure reciprocal trade * * * whenever and so often as the President shall be satisfied that the government of any country—

producing and exporting to the United States certain specified commodities—

imposes duties or other exactions upon the agricultural, manufactured, or other products of the United States, which * * * he may deem to be reciprocally unequal and unreasonable, he shall have the power—

to suspend by proclamation the provisions of this act—

for such time as he shall deem just.

Pursuant to the first part of this section, the President concluded agreements with France in 1898, 1902, and 1908; with Portugal in 1899 and 1902; with Germany in 1900, 1906, and 1907; with Italy in 1900 and 1909; with Switzerland in 1906; with Spain in 1906 and 1909; with Bulgaria in 1906; with the Netherlands in 1907; and with Great Britain in 1907.

These agreements, which were not submitted to the Senate but brought into force by proclamation by the President, were given full force and effect by various decisions of the courts of the United States.

Section 4 of the same act authorized the President, by and with the advice and consent of the Senate, to negotiate treaties with foreign countries providing for reciprocal tariff concessions. Pursuant to this authorization, the President concluded a series of treaties, all of which made provision for tariff reductions of considerable importance.

These treaties, known as the "Kasson Treaties", failed to receive ratification by the Senate and therefore never came into force, thus demonstrating the ineffectiveness of such a method.

TARIFF ACT OF 1909

Under the Payne-Aldrich Act of August 5, 1909, two schedules of duties, a minimum and a maximum, were enacted. The act authorized the President to ascertain those countries which did not "unduly discriminate" against American commerce and which accorded to the United States "reciprocal and equivalent" treatment and to declare by proclamation that the minimum rates should be applicable to all articles imported into the United States from such countries. Under the provisions of this act 134 proclamations were issued, including practically the entire commercial world.

TARIFF ACT OF 1922

The Fordney-McCumber Act of September 21, 1922, provided, under section 315, for the lowering or raising of duties by proclamation of the President on the basis of differences in the cost of production of articles in the United States and the like or similar articles of foreign countries.

These proclamations were to be issued after investigation by the Tariff Commission. Section 316 gave to the President power, whenever the existence of methods of unfair competition and unfair acts in the importation of articles into the United States should tend to destroy or substantially injure an industry, to cause additional import duties to be imposed or, in extreme cases, to cause such articles to be excluded altogether from the United States. Section 317 provided that when the President should find that the public interest

would be served thereby he should by proclamation specify and declare new or additional duties on the products of any foreign country whenever he should find that such country was discriminating in fact against the commerce of the United States as compared with that of other countries.

The constitutionality of the first of these sections was questioned on the ground of too large a delegation of power to the President. However, the Supreme Court of the United States in the case of *Hampton & Co.* v. *United States* (1928; 276 U.S. 394) upheld the constitutionality of the law, the Chief Justice stating that—

> the same principle that permits Congress to exercise its rate-making power in interstate commerce, by declaring the rule which shall prevail in the legislative fixing of rates, and enables it to remit to a rate-making body created in accordance with its provisions the fixing of such rates, justifies a similar provision for the fixing of customs duties on imported merchandise.

The constitutionality of the act was further upheld in the case of *Frisher & Co., Inc.*, v. *Bakelite Corporation* (1930; 39 Fed. (2d) 247), and in *Frisher & Co., Inc.*, v. *Elting* (1932; 60 Fed. (2d) 711).

TARIFF ACT OF 1930

In the Smoot-Hawley Act of June 17, 1930, the provisions of sections 315, 316, and 317 of the act of 1922 were reenacted in substance in sections 336, 337, and 338. The constitutionality of section 336 of this act was again questioned and upheld in the case of *United States* v. *Sears, Roebuck & Co.* (1932, 20 C.C.P.A., 295).

It must be evident that H.R. 8687 goes no further in the delegation of power than preceding measures have gone. Former enactments have delegated to the President the power to fix tariff rates and have also delegated to the President the power to enter into executive agreements concerning tariff rates. These enactments have not been held unconstitutional by the courts. In view of the fact that we are today in the face of an emergency which has seldom, if ever, been paralleled in the history of the country, and in view of the fact that these other measures in the absence of such an emergency have been upheld as constitutional, the constitutionality of H.R. 8687 does not seem open to serious question.

IMPORTANCE OF SAFEGUARDING EXPORT INDUSTRIES

If the United States is to regain prosperity and not sacrifice large and important agricultural and commercial interests which give employment to millions of the workers of the country, it must sell certain of its surplus products abroad. As stated by the President in his message to Congress:

> Important branches of our agriculture, such as cotton, tobacco, hog products, rice, cereals, and fruit raising, and those branches of American industry whose mass production methods have led the world, will find expanded opportunities and productive capacity in foreign markets and will thereby be spared in part, at least, the heartbreaking readjustments that must be necessary if the shrinkage of American foreign commerce remains permanent.

The Secretary of Agriculture has stated in his testimony, given before the committee on March 8, 1934, that—

> We normally export in this country about 55 to 60 percent of our cotton. We export normally 20 percent of our wheat, 40 percent of our tobacco, half of our packing-house lard, and about 30 percent of our rice.

Similarly, the Secretary of Commerce stated in his testimony given on the same day:

We also need a foreign trade to provide a market for our farmers, and no less for some of our most important manufacturing industries. Many of our largest industries, particularly those manufacturing the highest grade type of product, such as machinery and automobiles and electrical equipment, which can be made in America more skillfully and satisfactorily than anywhere else in the world and which have always led in the markets of the world, are organized on such a scale and under such efficiency that they produce far more than we can consume at home, and the closing of foreign markets to these industries in recent years is one of the reasons for the drastic lowering of their production level resulting in the throwing out of employment of hundreds of thousands of workers. It is in industries belonging to this class that unemployment is most severe, and one of the most effective measures for combating our unemployment situation and saving a large body of our industrious workmen from a Government dole would be to restore to these industries something more nearly approximating their normal foreign markets.

We hear a great deal about our agricultural surplus. This is evident because the wheat is produced and stored in elevators, the cotton is stored in warehouses or where it is readily located. There is no such industrial surplus in the form of automobiles, ready-made, looking for a market, or road-building machinery gathering rust. However, these industries are geared for manufacture with the expectation that a considerable percentage of their output will move into foreign markets. In addition to idle factories and unemployed factory workers I should also call your attention to our development of port facilities which are standing idle, of shipping which is unemployed, and of railroad facilities available for the use of export commodities but remaining inadequately unused to the extent that exports have declined. You can all see easily the picture which the Secretary of Agriculture has so clearly presented. The loss of foreign markets to farmers means the withdrawal of acreage and the destruction of communities. I must add to that picture that the loss of foreign markets for manufactured products has a like implication to our economy. We need to think of our laboring population in the cities and manufacturing centers no less than of our farmers, because it is of the very essence of the policy of the "new deal" to take into consideration the needs of a balanced national life and of all groups and segments of our people alike.

The Secretary of Agriculture also testified at the same time:

We have been making a little preliminary study of the wage earners, of the gainfully employed, including those in both agriculture and industry, and have found, in a rough way, that between 2 and 8 million of our gainfully employed wage earners and agricultural workers are in industries and branches of agriculture which are on the export market, and which would decidedly be beneficially affected by this bill.

In his testimony before the Committee, Mr. James A. Farrell, of the Chamber of Commerce of the United States, representing the Foreign Commerce Committee of that organization, said:

The national chamber's interest in reciprocal trade negotiations has been due in large part to the belief that the United States has been slower than other leading industrial nations to recognize the important place the foreign trade occupies as a stimulus to domestic recovery and as a permanent reinforcement of our national economic structure. The depression, since 1929, being one of drastic decline in buying power throughout the world, resulting in a serious curtailment of international trade, has affected the United States more acutely than most countries, and created a serious problem of unemployment which has been a little more acute in this country than it has been in other countries.

Seven million persons, it is estimated, are dependent for their livelihood on our foreign trade. It is impossible, therefore, to deal effectively with the problem of unemployment without taking into account the vital importance of our overseas commerce as a means indispensable to the success of the National Recovery Act and as an aid to employment.

The policy of bargaining our way to the markets of the world by means of reciprocal trade agreements is one to which Congress should give careful consideration. Other countries have delegated these powers to the Executive, and have

already, as in the case of Great Britain and her Dominions, made considerable progress ahead of the United States in making foreign-trade promotion instrumental to national economic recovery.

Legislation is necessary for the protection of American industries, many of which employ only a few hundred American laborers. If protection is necessary for these, it is all the more compellingly necessary for agricultural and industrial pursuits involving millions of farmers and working men who would normally be engaged in agriculture and industry to produce goods for our foreign trade. Can a policy be called protection in any true sense which does not protect such farmers and working men also?

Furthermore, the problem of maintaining satisfactory prices for many of the staple American products is intimately connected with the decline or revival of foreign commerce. If we are unwilling or unable to work out bargaining interchanges by which such branches of American production as cotton, cereals, hog raising, fruit growing, and the like, can dispose of part of their product in foreign markets, the pressure of supply on the domestic market will necessarily mean continued price depression. The more rigid the trade barriers of the world remain the more vigorous will have to be the expedients employed to sustain prices.

It is clear that the authority which H.R. 8687 would delegate to the President must be very carefully exercised so as not to injure manufacturers or domestic producers. As stated by the President in his message to Congress—

> The exercise of the authority which I propose must be carefully weighed in the light of the latest information so as to give assurance that no sound and important American interests will be injuriously disturbed. The adjustment of our foreign trade relations must rest on the premise of undertaking to benefit and not to injure such interests. In a time of difficulty and unemployment such as this, the highest consideration of the position of the different branches of American production is required.

The Secretary of State in his testimony before the committee given on March 9, 1934, was equally clear and explicit upon this point. He stated that—

> Unfortunately, too few persons stop to study and understand the mechanism of international finance and commerce. The entire policy as proposed by the pending House bill would rest upon trade relationships that would be mutually and equally profitable both to our own and other countries. While naturally no detailed plans and methods relative to the proposed negotiations have been formulated, it can be stated with emphasis that each trade agreement undertaken would be considered with care and caution, and only after the fullest consideration of all pertinent information. Nothing would be done blindly or hastily. The economic situation in every country has been so thoroughly dislocated and disorganized that the people affected must exercise patience while their respective governments go forward with such remedial undertakings as the proposed bilateral bargaining agreements.

It has been assumed by some that following such a tariff bargaining program as proposed in H.R. 8687 would seek to eliminate or destroy small industries or industries inefficiently conducted. One of the members of this committee, questioning the Secretary of Agriculture upon this point, said:

> We can at least protest in behalf of the people we represent if you are endeavoring to put them out of business in industry or agriculture, either one.

The Secretary of Agriculture, protesting against such an interpretation of the proposed program, replied:

> It seems to me, sir, that the essence of the "new deal," if I may be permitted to say it, is to take account of human rights. It would seem to me also that a man of the character of the President in administering powers of this sort would not be so inhuman as to retire in any barbarous way, such as you seem to contemplate, inefficient industries.

To meet the present world situation the first feasible step is to enable the Executive to enter upon a program of bargaining agreements with other nations. The very nature of international negotiation requires that it should be in the hands of the Executive; and to meet an international condition where foreign executives are being clothed with ever greater and greater power to effectuate speedy trade agreements, the United States, if it is to regain its lost proportion of world trade, must repose similar confidence in its President.

The proposed bill nevertheless does not remove from Congress its control of policy which must underlie every tariff adjustment. Although the exigencies of present-day conditions require that more and more of the details be left to Presidential determination, the Congress must and always will declare the policy to which the Executive gives effect.

ANALYSIS OF H.R. 8687

The bill under consideration adds to the present tariff law a new part, with a new title, namely the "Promotion of Foreign Trade." Its stated purpose is the expansion of foreign markets for the products of the United States. The means which it would use is the regulation of the admission of foreign goods into the United States in accordance with the characteristics and needs of American production in a way calculated to make the markets of other countries available for those branches of American production which are able to produce a surplus above domestic needs and hence are capable of supplying the needs of other countries.

CONGRESS DETERMINES THE POLICY—THE PRESIDENT EXECUTES THE POLICY OF CONGRESS

In order that this purpose may be carried out, in other words, in order that the policy declared by Congress may be appropriately executed, certain powers are accorded to the Executive branch of the Government, the President.

The official of the Government who represents all the people, having the entire United States as his constituency, is given the responsibility for carrying out the will of Congress. This is the appropriate method in a government that exists of, by, and for the people.

The bill sets up a definite criterion for Presidential action—

> Whenever he finds that any existing duties or other import restrictions are unduly burdening and restricting the foreign trade of the United States—

or that the purpose declared by the act will be promoted by the use of the powers which the act confers. These powers are:

> 1. To enter into foreign-trade agreements with foreign governments or instrumentalities thereof; and
> 2. To proclaim such modifications of existing duties and other restrictions or such additional import restrictions, or such continuance, and for such minimum

periods, of existing customs or excise treatment of any article covered by foreign-trade agreements, as are required or appropriate to carry out any foreign-trade agreement that the President has entered into hereunder.

There follows a limitation, namely, that the President many not increase or decrease by more than 50 percent thereof any existing rate of duty. Moreover, he may not transfer any article from the free list to a dutiable list or from a dutiable list to the free list.

MODERN PROCEDURE

As pointed out elsewhere in this report, the foregoing method of promoting trade is the method customarily used among modern commercial countries. Such countries include the most democratic nations in the world. Their governments operate, with respect to the promotion of international trade through the exercise of a very high degree of executive power in order that agreements may be speedily made with other countries and, when made, may assuredly be put into a prompt and efficacious operation.

It is noteworthy that, in dealing with a complex situation in other countries, the President is empowered to deal not merely with customs duties but with other import restrictions and that it is contemplated that he may wish to promise not only changes in duties but that a particular article, if now on the free list of the United States, shall be kept on the free list or if now dutiable at a given rate, shall remain dutiable at not exceeding that rate.

Particular notice should be taken, moreover, of the fact that the President may seek from other countries promises that their excise duties shall not be such as to nullify the results of their promises to modify their tariff duties. This is the fruit of bitter experience on the part of the exporters of American goods. One of the chief protective measures which the President will desire to take will consist of pledging other countries not to increase their excise duties at the same time that they are reducing their import duties.

In order that the necessary reciprocity may be accorded, the President is empowered to promise that existing excise duties which affect imported goods will not be increased during the term of any particular agreement. It should be carefully noted, however, that the President is given no right to reduce or increase any excise duty. His power of reduction of duties is limited to those which are in fact customs duties.

EQUAL RIGHTS FOR ALL; SPECIAL PRIVILEGES FOR NONE

The bill provides that the duties and other import restrictions which the President may proclaim in accordance with agreements which he may enter into shall apply uniformly to articles brought into the United States whether from the country with which the particular agreement is made or any other country.

It would be necessary that this rule should apply in the case of countries to which the United States is, by treaty or agreement, pledged to accord equality of treatment by virtue of the most-favored-nation clause. There are 48 such treaties and agreements in existence and others may be added. It is desirable that the rule of uniformity be maintained for its own sake, and for the general atmosphere of good feeling which it creates.

Because of the fact that, as trade is actually carried on, there is a wide differentiation between the commodities which are important as between one country and other separate countries, this generalization of rates does not operate to reduce seriously the bargaining power of a country which, having made one or more agreements, proceeds to negotiate with still other countries. A survey of the situation indicates that almost every important commercial country is the principal supplier of certain articles to the United States. The reciprocity agreements will deal primarily with the articles of which the other parties to them are respectively the principal supplier to this country. The result is that from the point of view of both sound policy and practical procedure, the rule of equality should prevail.

EXCEPTION AS TO CUBA—DEFENSE AGAINST DISCRIMINATION

Two exceptions are, however, made. The first permits the continuance of the preferential which has long been accorded by the United States to the Republic of Cuba.

The second authorizes the President to suspend the rule of equality in case a country discriminates against American commerce or otherwise takes action which, in his opinion, tends to defeat the purposes of the present bill. Retaliation against discrimination is in accord with section 338 of the Tariff Act of 1930. The language of the present bill gives the President power to take action against other detrimental practices which other countries may engage in.

DEFINITION OF "DUTIES AND OTHER IMPORT RESTRICTIONS"

The bill under consideration contains, at the end of the first section, a careful definition of the term "duties and other import restrictions." It is designed to cover the various types of measures for the retardation of trade with which the President will be expected to deal in his negotiations with other countries.

INCONSISTENT PROVISIONS OF ACT OF 1930 REPEALED

Under the present bill certain provisions of the Tariff Act of 1930 are repealed. These provide for what are known as contingent duties. Contingent duties are those which depend upon and vary in amount in accordance with the amount of duty placed upon the particular article in the tariff laws of other countries. Under the principle of equality of treatment, the duty which a country charges on a given product must be the same to all countries. This is required by the most-favored-nation clause. What the needs of a particular country are with reference to the height of duties usually bears little relationship to the needs of some other country with respect to duties upon the same types of articles. Contingent duties, accordingly, are not recognized as fulfilling a legitimate purpose, and are clearly in violation of the most-favored-nation clause.

No other country, with perhaps a single exception, maintain such duties. The United States cannot maintain them without violating its treaty pledges. The present bill is based upon the conception of equality of treatment and absolute integrity of international obligations. The contingent duties are clearly inconsistent with it and must

be repealed as a part of an act which is designed to carry out the purpose of the present one.

Contingent duties are to be sharply distinguished from countervailing duties. Countervailing duties are imposed for the purpose of neutralizing the effect of subsidies or bounties granted upon the production or export of the goods which may be imported into the United States. Nothing in the present bill interferes with the full operation of section 303 of the Tariff Act of 1930, under which countervailing duties are and will continue, where necessary, to be levied.

Similarly, there is no interference with the Antidumping Act of 1921, under which protection is afforded against the dumping of goods into the American market. Both antidumping duties and countervailing duties are generally recognized as legitimate exceptions to the obligations of the most-favored-nation clause.

It may be added that nothing in the present bill interferes with the protective provisions of section 3 (e) of the National Recovery Act. The provisions of section 337 of the Tariff Act of 1930, furthermore, remain in full effect as a protection to American industry against unfair competition.

THE FLEXIBLE PROVISION OF THE TARIFF REMAINS

The provisions of section 336 of the Tariff Act of 1930 are made inapplicable to any article with respect to the importation of which into the United States a foreign trade agreement is concluded pursuant to the present bill.

Section 336 is the flexible tariff provision, under which the Tariff Commission is authorized to raise or lower duties in accordance with a principle measured chiefly by the difference in cost of production between the United States and the principal competing foreign country. Obviously it would be impossible to exercise this function with respect to a rate of duty which the President had promised should be maintained at a stated level in one of the foreign trade agreements which he is expected to enter into. But except for its inapplicability in such a case, section 336 remains in full force and effect.

The present bill does not take away from the Tariff Commission any power nor does it prevent its exercising its functions under section 336 with respect to all rates that are not made the subject of agreements with other countries.

FLOUR MANUFACTURED FROM IMPORTED WHEAT

The third paragraph of section 311 of the Tariff Act of 1930 is made inapplicable to any agreement concluded under the present bill with any country which does not grant exclusive preferential duties to the United States with respect to flour.

This paragraph provides that no flour, manufactured in a bonded warehouse from imported wheat shall be withdrawn for exportation without the payment of a duty on the imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported. The purpose was to prevent any benefit accruing, under the exclusive reciprocity treaty between the United States and Cuba, to flour manufactured from imported wheat. That treaty was the only reciprocity arrangement

with another country in force at the time when the act of 1930 was passed. The present bill contemplates reciprocity agreements with many countries but the language is designed so that, so far as Cuba is concerned, the present situation will remain unchanged.

The new reciprocity agreements with foreign countries will not be exclusive. In other words, the other parties to those agreements will normally generalize the reductions to the United States in accordance with their most-favored-nation obligations with still other countries. The result would be that, if American millers were required to pay into the United States Treasury the amounts of the reductions of duties in the countries to which they export their flour, the generalization of such duties by the other countries would result in their competitors receiving reductions which would be denied to American manufacturers. It is desired that American manufacturers shall not be thus put at a disadvantage; and, accordingly, when the flour shipments, under the new agreements, are made to countries which do not, like Cuba, grant exclusive preferences to the United States, the provisions of the third paragraph of section 311 will not apply.

THE TERM OF THE FOREIGN TRADE AGREEMENT

The final provision of the bill under consideration deals with the amount of time during which a foreign trade agreement with another country may run. The provision is that such agreement must be terminable at the end of not more than 3 years. If it is not terminated at that time it must thereafter be terminable at any time upon not more than 6 month's notice.

The present bill undertakes to promote American trade. The agreements entered into thereunder will be for that purpose and intent. The demands of stable business are clearly that agreements, once entered into, shall be altered only for cause. The bill accordingly contemplates that they shall remain in effect until, for some definite reason, it may be in the interest of either country to terminate them. Any other provision on this score would be unfortunate in its effects on business and would be based upon a presumption of hindrance instead of encourangement to trade.

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