

IMPORT AND EXPORT CONTROLS

KENNETH S. CARLSTON*

"The combination of causes is beyond the grasp of the human intellect. But the impulse to seek causes is innate in the soul of man. And the human intellect, with no inkling of the immense variety and complexity of circumstances conditioning a phenomenon, any one of which may be separately conceived as the cause of it, snatches at the first and most easily understood approximation, and says here is the cause." *TOLSTOY, WAR AND PEACE* (Garnett Translation, London, 1904), Vol. 3, Pt. XIII, Ch. 1, p. 208.

"One way of attempting to improve the balance of trade is to restrict imports; another way, obviously, is to stimulate exports. Governments have not hesitated to use both types of approach in recent years. The degree of interdependence between the two types of developments cannot be over-emphasized. The difficulty of disposing of export surpluses was greatly intensified for all countries by the multiplication of trade barriers elsewhere; while on the other hand, protectionist policies at home tended to have the effect of maintaining or increasing costs of production for the export industries, thereby giving rise to an argument for assistance to exports." *GORDON, BARRIERS TO WORLD TRADE* (New York, 1941), p. 318.

The restoration of foreign trade will be brought about by no such simple stroke as the elimination of trade barriers alone. We must not be prone to snatch at the existence of restrictive devices, including import quotas and licensing systems, and say here lies the cause for the drying up of the channels of world trade. The mere removal of these blockages to trade will not suddenly cause those channels again to flow in full measure. The economic and political maladjustments that led to the adoption and spread of trade barriers, their impact upon the economic life of the countries which established them, the interaction—in their establishment and maintenance—of such forces as currency devaluation and instability, exchange control, protectionism and efforts to create economic self-sufficiency, bilateralism and the growth of trade blocs, must be appreciated. It will then be understood that the various restrictive measures adopted by states in the control of their international trade are not the primary cause of the breakdown in that trade but are rather induced by other and more deep-seated forces and are a part of many causative forces.

The need for freedom from dogma and breadth of vision in approaching the problem of the removal of trade barriers is paramount. Legalistic, axiomatic approaches rigidly applying preconceived principles will not suffice. Blanket condemnation and overnight elimination of all restrictive measures will furnish no

* B.B.A., 1926. University of Washington; M.A., 1928, American University; LL.B., 1933, Yale Law School. Member of New York Bar, American Society of International Law, American Bar Association, The Association of the Bar of the City of New York. Formerly attorney before the Mexican Mixed Claims Commission. Professor of Law, University of Illinois (1946-). Author: *THE PROCESS OF INTERNATIONAL ARBITRATION* (1946, Columbia University Press). Contributor to various legal periodicals.

cure-all. This is not to say that all possible steps should not be taken to bring about the removal of trade barriers. But a healthy international trade springs from the healthy interplay of vigorous domestic economies and sound currency systems. Thus the elimination of trade restrictions will effectively be accomplished only as a part of an international movement for the restoration of shattered trade areas and industries, including, among other things, the faithful carrying out of the monetary program of Bretton Woods.

It is with an appreciation of these fundamental facts that the present review of certain import and export controls must be approached.

IMPORT CONTROLS

Import quotas—definition. An import quota involves the establishment by governmental decree or regulation of a specific quantity or amount beyond which no imports of a designated commodity will be permitted in a fixed period. Whereas a tariff allows the unlimited importation of a commodity upon payment of the particular levy in force at the time, an import quota absolutely prohibits the importation of a commodity for a certain period of time as soon as a fixed quantity of imports (contingent) has been reached.¹

Administration. The complexities of the administration of quotas have been lucidly summarized by Condliffe² as follows:

“The administrative problems of quota policies . . . revolve around such questions as the form of the quota to be used, the base upon which it should be calculated, its distribution among importers and among exporters, the replacement of customs revenue by quota fees, the control of monopolies created by the exclusive right to import, and the correlation between import restrictions and export outlets.”

The simplest method of establishing an import quota is through the use of the so-called global quota, under which uncontrolled importation is permitted from any and all sources until the quota is reached, when official notice thereof is usually given. Depending upon the severity of the quota established,³ a rush of imports takes place upon the opening of each successive quota period, as importers compete among each other to preempt the limited market. This in turn leads to excessive price fluctuation, alternating periods of surplus and shortage in domestic markets, and over-quota importations caused by the inability of customs authorities to cut off imports at the exact point when the contingent is reached. Discrimination also results, both in favor of neighboring countries, who are most able to ship quickly into the quota country at the beginning of each quota period, and in favor of large importers who are likely to be best equipped to take quick advantage of an opening for importation.

Accordingly, division of the total quota among the principal countries of exporta-

¹ LEAGUE OF NATIONS. INTERNATIONAL ECONOMIC CONFERENCE, GENEVA, MAY 1927, DOCUMENTATION (C. E. I. 42, 1927) 30.

² CONDLIFFE, THE RECONSTRUCTION OF WORLD TRADE (1940) 218.

³ Numerous import quotas established in the United States were larger than the quantity of imports in the years just prior to their imposition and hence unfilled quotas occurred. Whitdesey, *Import Quotas in the United States* (1937) 52 QUARTERLY JOURNAL OF ECONOMICS 37, 47, 48, 52-54.

tion in accordance with their respective shares of the market in some fixed base period was early adopted so as to achieve a fairer participation among exporting countries. The particular base period to be chosen in each case was, however, readily seen to affect the relative position of suppliers and thus to furnish a means of manipulation whereby certain countries, with whom it was desired to promote political or economic ties, could be favored. For example, in the case of France, certain quotas tended to be favorable to Belgian products since they were calculated on a 1930-1931 base period when Belgian exports of many of the commodities were large. Another and somewhat complicated method of calculation involving the average of two base periods favored France's old suppliers as against Central and Eastern Europe.⁴ Moreover, this method, even when administered as impartially as possible, froze existing trade channels into a rigid system and did not permit of normal growth and variations in sources of supply in accordance with the advantages of the principle of the international division of labor.⁵

A further refinement in the administration of import quotas involved the introduction of licensing systems under which specific importations were carefully controlled through the distribution of licenses; that is, the contingent was allocated among the several domestic importers both as to time and quantity of importation by means of the grant of licenses to import. While this method had the administrative advantage of ensuring a controlled flow of imports at all times and the elimination of over-quota importations and violent fluctuations in imports, it led to still new problems, including trade in the coveted import licenses, corruption among those charged with its administration, and difficulty in obtaining access to the market by new importers.⁶ The alternative method of combining the global quota with a licensing systems seems to have been seldom adopted, yet, through permitting freedom of selection of purchases in the allowed amounts by importers, it would appear to involve the least interference with the functioning of normal trade channels and the tendency of purchasers to gravitate to the most efficient producer.⁷

Out of the administration of quota systems certain general principles have become apparent. The use of quotas to reduce imports below normal import levels rather than to prevent drastic increases in imports inevitably contributes to retaliatory prohibitions and to paralysis of the exchanges and economic stagnation. Consideration for the interests of other countries affected requires advance notice to them of proposed changes in quotas so that they will have an opportunity to present their views. In allocating national quotas among the merchants concerned, domestic concerns

⁴ HEUSER, CONTROL OF INTERNATIONAL TRADE (1939) 88-89.

⁵ YOUNG, THE INTERNATIONAL ECONOMY (1942) 524-526; Long, *Séductions et dangers de contingement* (1936) 59 REVUE DES SCIENCES POLITIQUES 409. For a description of the methods of administering quotas described above as they were successively adopted in France, see HAIGHT, FRENCH IMPORT QUOTAS (1935) 21-25.

⁶ Viner, *Memorandum on the technique of present-day protectionism*, in JOINT COMMITTEE CARNEGIE ENDOWMENT—INTERNATIONAL CHAMBER OF COMMERCE, THE IMPROVEMENT OF COMMERCIAL RELATIONS BETWEEN NATIONS AND THE PROBLEMS OF MONETARY STABILIZATION (1936) 58, 71.

⁷ GORDON, BARRIERS TO WORLD TRADE (1941) 268.

should not be enabled to dictate to their foreign suppliers the terms and conditions under which their import licenses are to be granted.⁸

Valuable general principles were laid down in a study under the auspices of the Joint Committee of the Carnegie Endowment for International Peace and the International Chamber of Commerce which may be usefully noted at this point:⁹

"1. Quotas should, as far as possible, be fixed for a definite period, for example, for one year at least. . . .

"2. Each country should be allowed to take full advantage of the total amount of the quotas allowed, without any other administrative limitation whatever. . . .

"3. Importers should receive increased guarantees of the fair and proper application of the quotas, as well as guarantees of prompt action in the matter of issuing licenses without additional charges.

"4. In fixing the quotas to be assigned to the various exporting countries, importing countries should bear in mind the actual origin of the goods and not merely the exporting territory."

History and development. Import quotas were introduced by France in 1931 and thence spread widely to other European countries primarily as a defensive measure against the currency depreciations and other effects of the depression of the 'thirties. France, with a balanced economy of agriculture and industry, found its agricultural production increasingly demoralized as world prices fell and export surpluses of other countries gravitated in increasingly large quantities to the higher French market.¹⁰ Tariff increases would furnish insufficient protection, partly because of the slowness and lack of predictability of effect of their manipulation and partly because of the existence of tariff consolidation agreements with other countries binding the affected commodities against tariff advances. Import quotas were at first established for a limited number of commodities but their use rapidly spread until by 1934 about 3,000 tariff items in France were subject to restriction.¹¹ By 1932 eleven European countries had quota systems and by 1939 there were nineteen European countries and nine non-European countries with quota systems.¹²

The flexibility, precision and quickness of adjustment of the import quota system made it an admirable instrument in insulating domestic markets for individual commodities from foreign price developments, achieving national self-sufficiency, encouraging the internal development of particular industries, and conserving supplies of foreign exchange. But it became impossible to achieve these ends through an autonomous, unilateral administration of a quota system when numerous other countries in turn adopted quota systems and the effects of this new weapon in commercial warfare became felt. Accordingly we find that in January, 1934, a new system of

⁸ Chalmers, *The Depression and Foreign Trade Barriers* (1934) 174 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 88, 100.

⁹ JOINT COMMITTEE, *op. cit. supra* note 6, at 408.

¹⁰ Long, *supra* note 5, at 410-411.

¹¹ GORDON, *op. cit. supra* note 7, at 246.

¹² *Id.* at 247-249.

quotas was adopted in France, the so-called "*contingents de reciprocité*." Instead of use as a defensive weapon, quotas were to be used to compel foreign countries to grant relaxations of their own restrictions in favor of France in exchange for permission to import into France up to the extent of existing quotas. Only 25 percent of existing quotas was to be administered as before, the remaining 75 percent being available to be used for bargaining purposes with other countries so as to obtain markets for French imports.¹³ Thus discriminatory bilateral bargaining began to supplant multilateral trade based upon price competition and trade blocs began to emerge. It became general practice to manipulate the allocation of quotas among countries in accordance with the state of the trade balance of the foreign country in question or its bargaining power as expressed in the form of release of blocked funds, reciprocal grants of enlarged quotas, reduced duties or commitments to purchase specific quantities of national products.¹⁴

Clearing agreements were frequently reached in which, without the use of foreign exchange, the proceeds of the sale of an exported commodity were used to pay for specific imports, debt service or the like. A number of European countries utilized their large purchases of raw materials or foods to effect specific exports of commodities by their citizens, liquidate debt arrears or exhaust frozen funds due their citizens.¹⁵

Tariff quotas were introduced under which, without otherwise affecting or changing an existing tariff schedule, specific quantities of goods were permitted to be imported either duty-free or at reduced duties, but they too became an instrument of discrimination. Thus in September, 1933, Germany granted a reduced duty to Yugoslavia on 8,000 tons of table prunes and duty-free admission of 3,000 tons of pulp prunes. Since these quantities were much larger than the normal amount of such exports from Yugoslavia to Germany, the effect was to exclude entirely exports from the United States, the previous principal supplier.¹⁶ But if tariff quotas are applied uniformly and without favoritism, their effect may be to increase trade. This is shown in the experience of the United States.

The United States has in the past established quotas on a limited number of commodities among which the most important is sugar, which was made subject to both a tariff quota and an absolute quota.¹⁷ The purpose of these quotas primarily has been to aid agricultural production. About 8 percent of the total imports into the United States in 1936 were subject to quota. Although the quotas on sugar, cordage and shingles had as their purpose the restriction of the volume of imports, in most of the other quotas this was not true. Instead, they were used as a means of encouraging trade through a limited reduction of tariff barriers. For example,

¹³ HEUSER, *op. cit. supra* note 4, at 240.

¹⁴ Chalmers, *supra* note 8, at 91.

¹⁵ *Id.* at 92; YOUNG, *op. cit. supra* note 5, at 520-521; LEAGUE OF NATIONS, REPORT ON EXCHANGE CONTROL (No. C.232. M.131. 1938.II.A.) 16, and ENQUIRY INTO CLEARING AGREEMENTS (Doc. No. C.153. M. 83. 1935. II. B.).

¹⁶ Chalmers, *supra* note 8, at 99.

¹⁷ 48 STAT. 456, 459, 670, 672 (1934).

quotas established for 1936 were often large in comparison with the amount of imports in the year immediately preceding; though it must be realized that those imports were in turn often smaller than imports in the 'twenties because of the sharp rate increases in the Tariff Act of 1930. It developed as a result that numerous absolute quotas and tariff quotas were not filled.¹⁸ The United States was a party to the Sugar Agreement of May 6, 1937, and the Coffee Agreement of November 28, 1940, acting in both cases to protect its interest as a consumer rather than as an exporter. In the latter case the United States utilized its position as the largest consuming country to permit an effective stabilization plan to be carried out among the producing countries of this hemisphere. Indeed, in its comprehensive study of intergovernmental commodity controls the International Labour Office has strongly indicated the necessity of the participation of consumer interest in commodity control schemes of this nature.¹⁹

To some extent agricultural quotas may be said to possess a special status. In view of the seasonal or perishable nature of some agricultural commodities, quotas have a particular value in protecting the domestic market from flooding by imports in periods of flush production. The inability of agricultural production to respond with any degree of flexibility to market changes also renders quotas a valuable regulative measure. Since supply in this field is determined by the aggregation of individual decisions of numerous small producers, over-correction in adjustment of supply to market changes often occurs. For example, a reduction in price may tend to cause increased rather than decreased production so as to preserve the same monetary return that smaller production at higher prices yielded. The result obviously is to create an even more precipitate price fall as the increased production is thrown on the weakened market.²⁰

The final step in import controls was reached with the establishment of import monopolies and bulk buying schemes. The grain monopolies of certain European countries established in the 'thirties and the recently announced proposed creation of a state purchasing commission in Great Britain to effect bulk buying of cotton are illustrative.²¹ Import monopolies enable an exact regulation of the volume and sources of imports in achieving domestic price stabilization and at the same time avoid many of the administrative difficulties of the import quota system.²² The state becomes completely free to place its purchases in whatever market it considers best suited to achieve its national purposes—which may include diplomatic considerations as well as purely economic—while also permitting the careful regulation of the flow of imports as an incident of domestic price support measures. The

¹⁸ Whittlesey, *supra* note 3, at 39, 47, 52, 63.

¹⁹ INTERNATIONAL LABOUR OFFICE, INTERGOVERNMENTAL COMMODITY CONTROL AGREEMENTS (1943) xxxviii, 26, 59.

²⁰ Report presented by M. van Zeeland on the possibility of obtaining a general reduction of the obstacles to international trade, January 26, 1938, GREAT BRITAIN, FOREIGN OFFICE MISCELLANEOUS No. 1 (1938) 36.

²¹ N. Y. Times, Mar. 19, 1946, p. 32, c. 8.

²² GORDON, *op. cit. supra* note 7, at 301 *et seq.*

Soviet system carries the use of import monopolies to its logical end. A complete state control of foreign trade operations, both imports and exports, is found. The quantities of the principal goods which may be imported are determined periodically and divided among state institutions and other bodies having the right to transact foreign trade operations. The countries from which the imports are to be purchased are also selected by the state authorities.²³

Impact upon national life. The fixing of quotas being an administrative task, their use is inevitably marked by a concentration of administrative power and a tendency to increase authoritarian controls of industry and markets. Quotas normally tend to support the domestic price structure by effecting a reduction in supply. It is often politically unwise, however, to permit price to reach its new equilibrium point under a severe quota limitation. Price ceilings are accordingly established. As demand exceeds supply, these ceilings become more and more meaningless unless some system of rationing is introduced.²⁴ Quotas, moreover, tend to spread rather than to be withdrawn. Eventually complete state control of industry is reached. The tendency to extend continually the scope of administrative control is pointed out by Condliffe:²⁵

“... as the discretionary power of public officials over external trade increased, there was a parallel extension of their control over domestic production and prices. Rationing applied to external trade was necessarily the means and the cause of equally extensive rationing of raw materials so that the whole gamut of economic activity became subject to State control. Like a parasitic growth, the emergency assistance and protection extended to private enterprise ended by choking it almost out of existence.”

It may be further noted that the use of import quotas as against tariff import controls results in the loss of national revenues. The difference between domestic and foreign price levels, less transportation costs, sometimes called quota profits, goes as a windfall to domestic importers who receive quota allotments. Under a tariff, at least some portion of this becomes public revenue. It has been pointed out in connection with the United States quota on sugar that “the income has been largely diverted from the United States Treasury to the pockets of producers of Cuban sugar.”²⁶ These quota profits are an ever present invitation to administrative corruption and trade in import licenses.

Elimination: Relation to currency controls and stabilization. Currency instability and trade barriers go hand-in-hand; each is a contributing factor to the continuance of the other. A shortage of exchange gives rise to the imposition of import controls so as to conserve the limited supplies of exchange for use when most needed. Since

²³ *Op. cit. supra* note 1, at 32.

²⁴ Viner, *supra* note 6, at 69, 71; GORDON, *op. cit. supra* note 7, at 265.

²⁵ CONDLIFFE, *op. cit. supra* note 2, at 223. In its comprehensive study of international commodity agreements the International Labor Office notes “the impossibility of devising effective international machinery without the adoption of complementary national measures in all of the more important producing countries” and “the ineffectiveness, in the case of certain commodities, of price-stabilizing measures unsupported by production or export regulation.” *Op. cit. supra* note 19, at xvii.

²⁶ Whittlesey, *supra* note 3, at 62.

exchange controls necessarily involve the issuance of exchange permits, they establish a system of licensing of imports which in turn is readily assimilated with an import quota system. Exchange controls may be likened to a first line of defense and import controls to a second line of defense against excessive exchange requirements. While exchange controls were at first usually instituted to protect and stabilize the currency, they soon were linked with commodity control measures in effecting economic penetration in foreign countries and directing production and consumption in desired channels domestically.²⁷ The experience of the Latin-American countries is illustrative. As a first step, all or a substantial part of incoming exchange was required to be delivered to a central exchange-control office. By means of exchange permits or import licenses or both, this exchange was thereafter allotted to specific transactions in accordance with pre-determined policies. The necessity of conserving exchange and preventing violent exchange fluctuations soon ceased to be the sole question of policy involved in the issuance of exchange permits and the accomplishment of broad national objectives came likewise to be a factor in the administration of exchange controls. Transactions with certain countries with whom commercial relations were to be developed were favored in the grant of exchange permits. Sometimes differential exchange rates were established as a means of influencing the growth of export trade in certain commodities and the destinations of exported commodities; the importers of commodities in which trade was to be fostered were allowed to buy their exchange requirements at lower rates.²⁸

Exchange controls and import quotas accordingly serve a coordinate function in conserving exchange and protecting foreign trade. A prerequisite to their elimination is the restoration of the system of multilateral clearing and currency reform through such measures as the International Monetary Fund. With currency reform, import quotas and exchange controls will tend to disappear as they will have lost their purpose.²⁹ The report of the Committee of Experts, in connection with the study of this problem made by the Joint Committee of the Carnegie Endowment for International Peace and the International Chamber of Commerce, recommends that states should agree to abolish quotas wherever possible and notes that: "States could subscribe to a multilateral agreement on the necessity of abolishing the quota system as soon as currency stabilization has paved the way for a definite recovery of world trade."³⁰ It is apparent that the elimination of quota systems must come as the result of an international movement in this direction, for few countries would care to expose themselves without means of defense to the vicissitudes of commercial warfare by voluntarily abandoning their trade control powers.

An important step in this direction was taken in connection with the agreement

²⁷ ELLIS, *EXCHANGE CONTROL IN CENTRAL EUROPE* (1941) 289; BONNELL, *GERMAN CONTROL OVER INTERNATIONAL ECONOMIC RELATIONS* (1940) 79-114.

²⁸ CARSON, *Exchange Control in Latin America*, 20 *FOREIGN COMMERCE WEEKLY* (September 1, 1945) 4.

²⁹ Viner, *Comments on the Improvement of Commercial Relations between Nations*, in *JOINT COMMITTEE, op. cit. supra* note 6, at 89, 97; *Currency and Quotas* (1936) 157 *THE SPECTATOR* 737.

³⁰ *JOINT COMMITTEE, op. cit. supra* note 6, at 407.

on the International Monetary Fund. One of its purpose is expressly stated in Article I to be: "To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade." Under Article XIV members assume a positive obligation to take "all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability" and to withdraw "restrictions on payments and transfers for current international transactions." A transitional period of three years is established after which members are under an obligation to report annually on restrictions still in force. After five years the continuance of any restrictions in the face of recommendations by the Fund that conditions are suitable for their termination will subject a member to compulsory withdrawal from the Fund. Also significant is the fact that under the terms of the proposed loan to Great Britain the latter undertakes immediately to establish a free exchange market for United States citizens for all current transactions with the United Kingdom and to eliminate all other exchange controls on current transactions one year after the loan takes effect.

Until the gold standard is resumed there will, nevertheless, still be a place for exchange stabilization funds, at least of the type of the British exchange equalization fund. By creating what may be loosely described as a buffer stock of exchange, with the Treasury authorities stepping into the exchange market and buying sterling bills when offered in suddenly large volume and selling holdings of sterling exchange in periods of heavy demand, the British fund was used to iron out fluctuations in exchange rather than rigidly to resist deep-seated, long-term movements in the exchange market.³¹ The use of an exchange stabilization fund in this manner, to create a relatively stable price for exchange and to eliminate excessive short-term market fluctuations, tends to enhance foreign trade rather than to restrict it by ensuring reasonable price predictability.

Nor will the continuance of the sterling bloc system in its pre-war form necessarily be a bar to the development of multilateral trade. The pegging of the external value of a currency to sterling and the maintenance of central monetary reserves in London funds characteristic of the currency practices of countries within the system³² were largely the outcome of a voluntary, normal development of the trade relations of the countries within this bloc. It was the exchange depreciation which was adopted by these countries, when they ceased to maintain the gold standard, which resulted in increased prosperity in such countries and a capacity to purchase more foreign goods. As they followed sterling downward Great Britain

³¹ Einzig, *The Technique of Exchange Control* (1938) 48 THE BANKER 9; HORWITZ, LES FONDS D'ÉGALISATION DES CHANGES ET LEUR FONCTIONS ÉCONOMIQUES (1940) 48-49, but cf. WAIGHT, THE HISTORY AND MECHANISM OF THE EXCHANGE EQUALISATION ACCOUNT (1939) 138-139 (injurious effects of masking economic trends); HALL, THE EXCHANGE EQUALISATION ACCOUNT (1935) 83 (increase of disturbances in price relationships).

³² DE VEGH, THE POUND STERLING (1939) 7-9.

became an increasingly larger buyer and seller in their markets and, consequently, the British proportion of the world's export trade increased.³³ Sometimes over-depreciation of a satellite currency occurred, giving the country in question a competitive advantage in British trade. In 1933 the Danish exchange rate was lowered to approximately the same discount as that available to New Zealand as the result of the pressure of Danish farmers.³⁴ Many of the trade problems engendered by the sterling bloc system since the war arose from the fact that sterling has not been freely convertible into foreign exchange or into gold, owing to the large wartime accumulations of sterling balances both by British creditor countries within and outside the sterling area. It is estimated by the National Foreign Trade Council that the total of sterling balances held by Britain's creditors is £3,097,000,000 of which £2,512,000,000 is held in the sterling area and £585,000,000 is held in the non-sterling area.³⁵ With a reduction of these sterling commitments to manageable proportions, which will be greatly facilitated by the proposed United States loan, and with the restoration of a healthy British export trade, the unblocking of sterling should be expected. As concluded in a recent Department of Commerce study:³⁶

"To attack a sterling area system and demand its abandonment on the ground that it is discriminatory against particular trade movements without at the same time offering an alternative approach which will be successful is to confuse effect and cause. Unless sterling returns to its prewar status of convertibility, by whatever means this result is achieved, some type of sterling system is almost inevitable. The task of those who are opposed to a sterling system similar to the sterling area is to take the steps necessary to insure the complete convertibility of sterling. Dissolution of the sterling area as such would not solve the problem or automatically bring about an expansion in the total volume of imports from the United States."

The presence of most-favored-nation clauses in commercial treaties has not prevented the imposition of quota systems. The global quota, at least, is not *prima facie* discriminatory, though quotas may be opposed to the spirit of the clause.³⁷ Recent versions of the most-favored-nation clause have expressly reserved to the parties the right to impose quotas in conjunction with measures designed to regulate or control the production, supply or prices or similar domestic commodities or measures tending to increase the labor costs of producing such commodities.³⁸

³³ Harris, *British and American Exchange Policies* (1934) 48 QUARTERLY JOURNAL OF ECONOMICS 471, 501.

³⁴ Baster, *A Note on the Sterling Area* (1937) 47 ECONOMIC JOURNAL 568, 572-573.

³⁵ (1946) BUSINESS WEEK (February 23, 1946) 114.

³⁶ Heatherington, *The Sterling Area*, 2 DEP'T OF COMMERCE, INTERNATIONAL REFERENCE SERVICE (November 1945) 19.

³⁷ Cf. HAIGHT, *op. cit. supra* note 5 at 22, noting that discrimination in practice will exist in favor of neighboring countries which can be the first to send goods.

³⁸ E.g., Reciprocal Trade Agreement with Canada, November 15, 1935, Art. VII, 49 STAT. 3960, 3963 (1935). See generally Rist, *Comments on the Past and Future of the Most Nation Favoured (sic) Clause in Its Limited and Unlimited Forms*, JOINT COMMITTEE, *op. cit. supra* note 6, at 111; *The-Most-Favoured-Nation-Clause and Customs Quotas* in LEAGUE OF NATIONS ECONOMIC COMMITTEE REPORT TO THE COUNCIL ON THE WORK OF THE THIRTY-FIFTH SESSION, June 18th to 22nd, 1931 (Doc. No. C. 427. M. 177. 1931. II. B.) 2, 7.

Yet another situation intimately connected with this problem of effecting the free convertibility of sterling demonstrates the interaction of the various forces involved and the broad impact which the International Monetary Fund will have. The shortage of dollar exchange resulted in the creation of the dollar exchange pool in order to concentrate and conserve this exchange. While the elimination of this pool is not dependent upon the establishment of the free convertibility of sterling, if eliminated, the various sterling area countries would have to rely on their own control of their dollar expenditures. As a result new import controls might be created and existing ones further protracted to prevent shortages of dollar exchange. The International Monetary Fund will likely render unnecessary any further continuance of the dollar exchange pool.

It may be anticipated that the various types of import restrictions will tend to diminish in the early post-war years as replenishment of national stocks and reconstruction takes place. The real test will come when production has been restored to normal volume. Accumulated reserves of credit will by then have been largely exhausted. It is then that economic statesmanship of the highest order will be required if even more savage trade warfare and restrictionism than ever before is to be prevented.³⁹

EXPORT CONTROLS

Export subsidies—definition. An export subsidy has been broadly defined as “a grant made to a specific industry by the government without expectation of future recompense.”⁴⁰ More precisely, export subsidies “consist of various kinds of payments or other benefits granted by the State or by private organizations upon the production or exportation of specified articles thus placing the subsidized industry or export branch in a more favorable position as compared with other similar national or foreign industries or export branches.”⁴¹ They permit foreign sales at a lower price than on the domestic market, with due allowances for differences in transportation costs.⁴²

Administration. Export subsidies may be effected by direct means, such as bounties or grants to the export industries to be fostered, or by more subtle and indirect methods. Of the former type was the British Sugar Subsidy Act of 1925, granting a subsidy on all sugar or molasses manufactured in Great Britain from beets grown in that country. Export subsidies were partly responsible for the growth of the Japanese dyestuff industry. In Germany the proceeds of a turnover tax on home sales was used to subsidize exports. Characteristic of indirect subsidies are governmental export credit guarantees. In Great Britain the Overseas Trade (Credits and Insurance) Amendment Act of 1921 empowered the Board of Trade to give guarantees in connection with export transactions. Occasionally the Export-Import Bank

³⁹ Chalmers, *What Is Ahead Now in Foreign-Trade Policies* (September 15, 1945) 20 FOREIGN COMMERCE WEEKLY 3.

⁴⁰ DIETRICH, *WORLD TRADE* (1939) 94.

⁴¹ LEAGUE OF NATIONS, *op. cit. supra* note 1, at 8.

⁴² GORDON, *op. cit. supra* note 7, at 320.

in the United States has underwritten some proportion of the risk of export credit extended by commercial banks. In numerous other ways favored treatment by government to export industries has manifested itself. Tax reductions may be given to exported goods; thus in France the tax on luxury articles was reduced from 12 percent to 3 percent on goods sold abroad. Preferential transport and railway charges may be established. Government aid may be extended in price stabilization schemes such as in rubber in the Federated Malay States, cocoa in Ecuador, and the creation of buffer stocks in Brazilian coffee.

The International Labour Office has pointed out the importance of buffer stocks in the prevention of violent price fluctuation in basic commodities. The support of domestic markets by replenishing stocks in times of falling prices will tend to diminish the disastrous effects of industrial depression while the disposal of such stocks in times of advancing prices will contribute to checking a boom.⁴³ But buffer stocks should not and cannot be used rigidly to oppose deep-seated price trends. The breakdown of coffee valorization schemes in Brazil and of rubber price control schemes shows that the real function of buffer stocks is to eliminate short-term violent price fluctuations.

Direct control of exports by means of export quotas and other export control schemes is sometimes resorted to in an effort to control world price. This of course requires that the country or countries participating must not only possess a virtual monopoly of the commodity but demand for the commodity must be inelastic in relation to price changes and the commodity must not have ready substitutes. Direct export controls have also been used to conserve domestic stocks of a commodity in which a shortage existed, to cooperate with another country in the administration of its import quota system, and to regulate the flow of commodities to a particular area so as to prevent the creation of an inconveniently large credit balance or the accumulation of blocked foreign credits.⁴⁴

History and development. Export subsidies or bounties were widely adopted as early as the seventeenth and eighteenth centuries in France and England as an expression of the prevailing philosophy of "mercantilism." A bounty on exported wheat was introduced in England in 1689 and was not repealed until 1814. Export bounties appeared again on the Continent in the latter half of the nineteenth century, the most important group being the sugar export bounties.⁴⁵ Export subsidies recently began to play an important role in the 'thirties, when a number of countries, including agricultural-exporting countries, resorted to them in order to offset exchange disadvantages. They were also used to assist in maintaining a relatively stable domestic market price for agricultural commodities of which an export surplus existed. Certain of the British Dominions adopted subsidizing measures for a number of agricultural products. The United States also supported export markets for wheat and cotton by compensating exporters for losses entailed in purchasing on

⁴³ INTERNATIONAL LABOUR OFFICE, *op. cit. supra* note 19, at xxvii-xxviii.

⁴⁴ GORDON, *op. cit. supra* note 7, at 353, 361.

⁴⁵ LEAGUE OF NATIONS, *op. cit. supra* note 1, at 9-10.

a domestic market with higher prices than world price. The final step in their use was seen in Germany, which imposed a turnover tax of 2 percent or more on home sales and utilized the proceeds not only to enable the exporter to meet foreign competition but to achieve political purposes of the moment, such as the fostering of trade in a particular area or branch of industry.⁴⁶ It has been estimated that exports were subsidized in this manner during the period from 1935-1938 in the neighborhood of 35 percent.⁴⁷ Export subsidies were likewise seen to be a necessary adjunct of foreign exchange control systems; for if imports are to be curtailed in restoring the balance of trade, exports are likewise to be fostered to the same end.

Impact upon national life and other effects. An export subsidy is inherently a short-lived instrument which tends to defeat its own purpose. To the extent it succeeds in supporting a higher domestic price than the world price, it will tend on the one hand to discourage domestic consumption and on the other hand to encourage a larger volume of domestic production than is justified in view of world price. The result will be to increase further supplies to the world markets and still further to suppress world price. Retaliatory measures by importing countries will in turn ensue which will only render more difficult the solution of the basic problems of conserving exchange and restoring trade balances. Additional import restrictions may, in addition, have to be established to prevent re-importation of the subsidized exports. If the exporting country is an important world supplier of the particular commodity, the grant of a subsidy will tend to be reflected in a corresponding additional fall in world price, with consequent lack of real benefit to the domestic producer. When a country is faced with the problem of an exchange disadvantage affecting its competitive position in world markets in respect of all its exports, it is essentially faced with the problem of currency devaluation. For if it should adopt the solution of establishing export subsidies and world prices should continue at the same or lower levels, these subsidies will have to be continued indefinitely if foreign markets are to be preserved. Thus the interaction of forces in international trade is again demonstrated.⁴⁸

Elimination. As in our discussion of the problem of the elimination of import quotas, the elimination of export subsidies and all other measures impeding the free and unfettered interchange of commodities among nations and growth of world trade will only come about as the result of an international movement in this direction. The first step to this end has been taken in the agreements for the establishment of the International Monetary Fund and the International Bank for Reconstruction and Development. They provide the necessary favorable financial climate for the growth of international trade through promoting exchange stability and providing means for industrial rehabilitation. It now remains for the forthcoming International Trade Conference to point the way for the eventual elimination of all trade restrictions.

⁴⁶ GORDON, *op. cit. supra* note 7, at 326-334.

⁴⁷ ELLIS, *op. cit. supra* note 27, at 240.

⁴⁸ GORDON, *op. cit. supra* note 7, at 322-326; HEILPERIN, *THE MONETARY ASPECT OF THE RAW MATERIALS PROBLEM AND THE REVIVAL OF INTERNATIONAL TRADE* (1938) 28.