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THE PERIL POINT AND SECTION 22 PROVISIONS--
ASSET OR LIABILITY

by

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At the outset, I should like to circumscribe the limits of the main effort of this paper. It will be specifically oriented to agriculture. Because of this restriction and the restriction of time, a major part of the treatment will be devoted to Section 22 and related problems, and the peril point will be relegated to a brief and general commentary. After a few introductory remarks we begin with the peril point provision. Thence, we shall shift to a consideration of the import quota idea, of which Section 22 is a good example. That part of the paper will feature four subdivisions: the theory of quotas; the legislative legacy and provisions of Section 22; a review of activities under Section 22; and a brief appraisal of the program. We shall then give some concluding remarks.

Two types of commercial policy are represented by the peril point provisions and Section 22. The former is a part of the broad fabric of tariff policy as it is administered through the trade agreements program. The latter is a form of quantitative restriction which is part of that vast array of multifarious international trade barriers that flourished after the depression era.

As we proceed to describe these two we should not minimize the other legal means whereby the United States Government can intervene to affect commercial relations such as the export subsidy, the excise tax, the tariff quota, the bilateral and state trading agreements, monetary arrangements, National Security provisions and many others, along with outright embargoes.

Tariffs vs. Quotas as Policy

A few comments should be made relative to the difference between a commercial policy which is dependent on the tariff for its effectiveness and a policy which is oriented strictly to quantitative controls and agreements. If a country has some idea as to the shape and level of the demand and supply curves for a given commodity, and if these curves are not particularly inelastic, there is little difference in many of the economic effects which result from the imposition of a tariff or a quota. If the quota is set at the volume of imports which would result from the imposition of a given tariff, the protective effect will be the same in either case and so will the consumption and redistribution effects.

Kindleberger has provided us with a good comparison between the effects of tariffs and quotas in his excellent book.^{1/} The tendency on the part of both is toward higher internal prices, reduced over-all consumption, limited imports and encouraged domestic production.

The revenue effect of the two is, however, another matter. Governments

^{1/} Kindleberger, C. P., International Economics, 2nd Ed., p. 236.

collect duties resulting from tariffs. Under a quota policy, domestic prices are higher than without quotas, and the organizational structure of importers and exporters will dictate who receives the "rent" surplus. There are many ramifications of the revenue effect, especially where governments follow a system of import licensing. The closer a situation approaches that of bilateral monopoly, the more theoretically indeterminate a particular situation becomes.

Quantitative controls and tariffs differ in other ways, the main one being that of the manner in which the quota is set. Tariffs, of course, place no quantitative limits on imports. Quotas are allocated by arbitrary and fixed formula among competing countries, many times in a discriminatory manner. Historical cost-price conditions are often ignored in attempts to change the situation. (The Cuban sugar case is a good example of all this)

The Peril Point Provisions

From its inception in 1934, the Trade Agreements Act was based on the sound assumption that tariffs existed in the United States which could be reduced and that the increased imports which resulted would not seriously injure domestic industry. This contention was repeated, in effect, at all Congressional hearings on the original Act up to 1951.

The administration of the program reflected this emphasis. The Tariff Commission would undertake elaborate studies of industry before initiating negotiations and, at times, only limited concessions would be made on particular commodities. As an example of this, the duty on grapes was reduced far more heavily for imports from February 15 to June 30 than for imports in the rest of the year. The same is true for tomatoes and other commodities.

Despite all the precaution, however, there were bound to be unforeseen instances in which tariff concessions might induce a larger volume of imports than had been anticipated and might lead to domestic injury. Such unforeseen results compelled the President to withdraw some concessions in the early 1940s, and along with the uncertainties of war, led to the insertion of a clause on "unforeseen developments" in all later trade agreements. The agreement with Argentina in 1941 incorporated such a clause, which developed into a standard escape clause in the Mexican Agreement of 1943 and was included in the General Agreements on Tariff and Trade (GATT) later on.

Despite the existence of those clauses in the agreements, no case had arisen up to 1947 in which a tariff concession was withdrawn under them.^{2/} Perhaps it was due to this lack of protective action that certain members of Congress and industry representatives encouraged procedures to activate these clauses. Hence, in 1947 the President instructed the Tariff Commission by Executive Order to investigate any claim to serious injury which might be brought to its attention.

^{2/} Commission on Foreign Economic Policy, Staff Papers, February 1954, p. 281.

Notwithstanding all these measures, the Congress in 1948 felt that statutory provisions were necessary to ensure that tariff reductions would not imperil domestic industry. The so-called peril point provisions were enacted accordingly, and except for the interim 1949-51, have been part of tariff policy ever since.

The peril point provisions and the escape clause should be distinguished. The peril point idea was passed to forestall injury before concessions are made by obtaining the expert counsel of the Tariff Commission. The escape clause deals with concessions already made in trade agreements and which unexpectedly cause serious injury to domestic industry.^{3/}

The peril point provisions of 1951 as amended in 1958 require the President, before entering into any trade-agreement negotiation, to transmit to the Tariff Commission a list of the commodities that are to be considered for concessions. The Commission is then required to conduct an investigation, including a public hearing and to report its findings to the President on (1) the maximum decrease in duty, if any, that can be made on each listed commodity without causing or threatening serious injury to the domestic industry producing like or directly competitive products, or (2) the minimum increase in duty or additional import restrictions that may be necessary on any of the listed products in order to avoid serious injury or the threat of serious injury to such domestic industry.^{4/}

The President may not conclude a trade agreement until the Commission has made its report to him or until the lapse of six months from the date he transmits the list of products to the Commission. If the President concludes a trade agreement that provides for greater reductions in duty than the Commission specifies, or that fails to provide for the additional import restrictions specified, he must answer to Congress in writing why he failed to act in accordance to the Commission's specifications.

Agriculture in this country has not been greatly involved in peril point investigations up to the present. I searched the various reports of the Tariff Commission and could find no large scale agricultural activity in the determinations. The obvious reason for this, of course, is that we have offered few concessions on farm products during the post-war period. But perhaps the real reason for lack of negotiations is the nature of our farm problem, i. e., high domestic farm prices which induces surplus accumulations and expansions in world output which, in turn, necessitates control of domestic production and ultimately restriction on imports. Section 22, to be outlined shortly, has

^{3/} For an excellent analysis of the escape clause see "The Trade Agreement Escape Clause" by Irving B. Kravis, American Economic Review, Vol. XLIV, June, 1954, pp. 319-338.

^{4/} U. S. Tariff Commission, Operation of the Trade Agreements Program, 11th Report, July 1957-June 1958, p. 85.

been the principal tool used for restricting agricultural imports. Another reason for this limited activity between agriculture and the peril point is that since World War II the areas have been limited wherein countries with which we were negotiating trade agreements could compete in agricultural bargaining.

Recently there has been a flurry of activity regarding possible tariff reductions. The six-nation European Common Market is producing mixed reactions on the possibilities for reduced tariff barriers against U. S. farm exports. We will naturally have to give concessions. Negotiations begin this fall and continue into January 1961. Tariff cuts in the present trade agreement program is limited to not more than 20 per cent over a two-year period, but several commodity groups are worried over the list on which we will offer concessions. Hearings began July 11 and I have not received details as to which groups will claim "serious injury" by prospective increases in imports. We will offer lower duties on cattle, tallow, processed meats, cheese, poultry, oil cake meals, fruits, and wool and cotton materials in exchange for lower barriers and concessions on food grains, oilseeds, feed grains, all fruits, all vegetables, all edible fats and oils, naval stores, tobacco, live animals, meats, all dairy products and eggs. The fact that some commodities are on both lists means that we shall give concessions on our imports from smaller agricultural countries and ask concessions from our larger customers, especially on surplus commodities.

The one noticeable effect on tariff policy of the peril point and similar provisions is that the President's power to negotiate trade-agreement concessions has been substantially reduced while the Tariff Commissions policymaking power has increased. Since 1947 there has been a tendency for the Executive to lean more and more toward a multilateral negotiating of trade agreements while Congress has been restricting the President's power to reduce tariffs by enacting, along with the peril point, the escape clause, defense essentiality amendments, Section 22 Amendments, etc. No doubt the caution of Congress is explained largely by the fact that by shortly after World War II most of the non-injurious concessions had been made. Thereafter tariff cuts began to be felt in that they stimulated imports.^{5/}

We may conclude that the peril point and escape clause technique have, in effect, strengthened protectionism. Under present circumstances, due to these and many other protective provisions, it is difficult to say whether the Trade Agreements Act as last extended in 1958 is more important as a means for reducing trade impediments or as a legal protective device against import competition.

^{5/} For an excellent article on tariffs see Piquet, Howard S., "Tariff Reductions and United States Imports." Compendium of Papers on Foreign Trade Policy, Committee on Ways and Means, Washington 1957, p. 231.

Import Quotas--the Theory and Problems

When the French developed the import quota in 1930 to raise the price of wheat to the French peasant, who had been threatened by the bumper Australian crop of 1929-30, they ushered in an era of extraordinary protective devices. Most-favored-nation clauses and other restrictions on independent action had voided the use of the tariff as an emergency resource.

Economists have endeavored to analyze the economic effects and incidence of import quotas and attendant devices, often forgetting their most important characteristic--that of administrative flexibility. Tariff duties are as a rule stable over time, and tariff legislation--even that relating to peril points, escape clauses and the like--take time to change. Not so with quotas. They are temporary by nature and subject to administrative discretion. Tariffs are usually imposed at a sensitive point of the price mechanism and their effects are diffused throughout the factors affecting demand and supply. They can be imposed sufficiently high to keep a commodity out of a country but circumstances may prevail which allow imports to continue, even at high tariff levels, since the effects of the duty may be borne by the foreign exporter, or can be passed on by the immediate consumer.

This situation exists with respect to the most important case in quota theory: that of the highly inelastic supply curve of exporting countries. Under such circumstances a tariff cannot either materially increase the price in the importing country or reduce the volume of imports. While the tariff improves the terms of trade and gains revenue for the importing government by taxing the foreigner, political circumstances among producers at home often dictate a different solution.

Figure 1 illustrates this case.^{6/} We are assuming a closed system where total demand and supply conditions for a particular commodity are represented in our chart by the importing country (country M) and exporting country (country X). In this situation no reasonable tariff will raise and redistribute incomes among producers in country M. A quota which halved imports, on the other hand, would clearly raise prices from OP to OP'.^{7/} If country X does nothing about this quota, the export price there will drop to something like P''. Hence the quota in country M is likely to be followed by a stabilization scheme in country X.

This case is the theoretical norm in agriculture. Schemes abound all over the world for guaranteeing a "fair price" to domestic producers. In many of these countries policies of price raising and income support to farmers would be defeated by free imports or any reasonable tariff rate. Hence, the widespread use of quotas and other restrictions to reduce the quantitative impact of foreign competition to a tolerable amount.

Then there is the case where the quota is used to protect industry and redistribute incomes due to the lack of knowledge of the supply curves in ex-

^{6/} Kindleberger, C. P., op. cit., p. 239.

^{7/} Ibid.

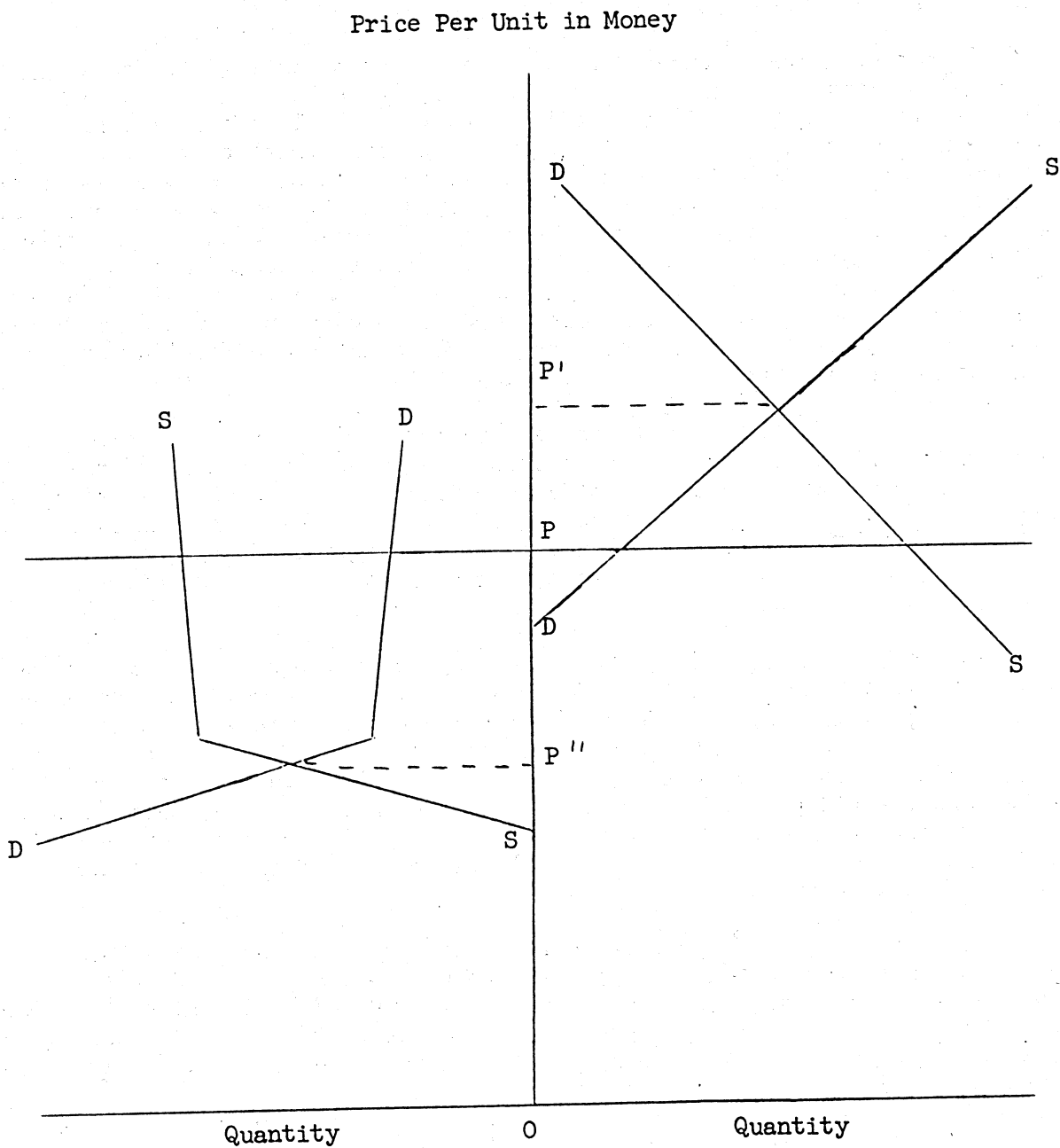


Fig. 1. The Imposition of Quotas in Partial Equilibrium in Face of Inelastic Supply.

porting countries. Governments simply will not tolerate an unrestricted policy of importation in the modern world where foreign governments and suppliers practice all forms of price discrimination and dumping in order to increase their marginal revenue or to rid themselves of a domestic problem. Our continued talk of a two-price scheme for wheat suffices for an illustration. We inspire the atmosphere for quota application with such talk.

Though the quota gives an element of certainty in economic affairs, especially in cases of inelastic and unknown foreign supply, and though it has advantages over the tariff in its administrative flexibility, it is not without its own problems. I will be limited to listing a few of these only. Fixing of the quantity of imports is only the beginning of such questions as: Which units, e. g., cattle, bushels, tons, etc. will be allowed? How will the quota be divided globally among exporters? Which importers will be permitted to utilize quotas? At which ports? How will the quota be distributed over time? How will the quota affect the income and balance of payment position of the country? Will it foster monopoly? The right answers to these questions have not been easy to find. But answers have been found and one thing is for sure: they gave more power to administrators and subjected trade to more arbitrary decisions on the part of government.

Legislative Provisions of Section 22

Section 22 was added to the Agricultural Adjustment Act of 1933 by Public Law 320, Seventy-fourth Congress, approved August 24, 1935. Since that time it has been amended several times and supplemented by trade agreement legislation. As amended, Section 22 authorizes the President to restrict the importation of commodities by the imposition of fees or quotas, if such importation tends to render ineffective or materially interferes with programs of the United States Department of Agriculture which relate to agricultural commodities. It requires the Tariff Commission on direction of the President, to conduct an immediate investigation, including a public hearing, and to make a report and recommendation to the President. The scope and permissible action of the original legislation was expanded by the Trade Agreement Extension (TAE) Act of 1951. Under this Act no trade agreement or other international agreement entered into at any time by the United States may be applied in a manner inconsistent with requirements found in Section 22.

The TAE Act of 1951, as amended, also provides that under Section 22, special procedures may be used in emergency conditions due to the perishability of the product. The Secretary of Agriculture reports the emergency conditions to the President and the Tariff Commission, and the Commission must make an immediate investigation, either under Section 22, or under Section 7 of the TAE Act of 1951, and make appropriate recommendations to the President. The Commission's report to the President and the President's decision must be made not more than 25 calendar days after the case is submitted to the Tariff Commission. The President, if he believes it necessary, however, may make a decision before getting the Commission's report.

This possible emergency action was clarified by Section 104 of the TAE Act of 1953, which was an amendment to Section 22. The President may take

immediate action without awaiting the recommendation of the Tariff Commission whenever the Secretary of Agriculture determines and reports to him with regard to any article or articles that a condition exists requiring emergency treatment. Such action by the President may continue in effect pending his receipt of the report and recommendation^{8/} of the Commission on the Section 22 investigation, and his action thereon.

Three specific prerogatives are given the President in acting on these recommendations: (1) He may impose fees not in excess of 50 per cent ad valorem; (2) He may not reduce the importation or warehouse withdrawal to less than 50 per cent of a representative period; and (3) He may designate any article or articles by physical qualities, value, use or any other attribute.

All sections under Section 22 are initiated in the Department of Agriculture. The primary responsibility is assigned to the Administrator of the Foreign Agriculture Service. It is here that preliminary investigations and actions are usually initiated.

I have attempted to account for all the investigations or supplementary investigations made by the Tariff Commission under Section 22 from the beginning up to January of this year (1960). This, of course, does not include the great number of preliminary hearings held by the Department of Agriculture. There have been 52 of these investigations most of which have been devoted to studies and reports on cotton and wheat. One would naturally expect this because it is in these products that the stakes are highest. That is, the price support and control programs have intervened more significantly there.

Import controls under Section 22 were in effect for seven groups of commodities, as of 1959: cotton and cotton products, wheat and wheat products, specified dairy products, flaxseed and linseed oil, peanuts and peanut oil, rye and rye flour and meal, and tung oil and tung nuts. Two of these actions--cotton and wheat--have been in effect for many years: Cotton since 1939; wheat since 1941. The others are relatively recent actions. Controls on oats, barley, and certain edible tree nuts have recently been in effect, but were not continued beyond September 30, 1955. Controls were reimposed on almonds for one year beginning October, 1957. Quotas on harsh rough cotton were removed January 28, 1958.

Except for rye, which has been under investigation recently, these controls are of a continuing nature. This means that they continue automatically until modified or terminated by the President due to changed circumstances. Certain other details apply to the various commodity programs but time and space forbid their inclusion.

An appendix (Appendix I) has been reproduced from information obtained

^{8/} U. S. Tariff Commission, "Investigations Under Section 22 of the Agricultural Adjustment Act, Fourth Ed.," Washington, May, 1958.

^{9/} I am indebted to the Import Program Branch, Foreign Agricultural Service, for the most of the information contained in this section.

from the Foreign Agricultural Service which shows the status of Section 22 programs as of January, 1959.

Appraisal of the Program

I shall attempt to briefly evaluate Section 22 from two points of view. First, it will be appraised as an instrument of policy, a tool, if you please, (and a program in itself) by which agricultural imports are prevented from disrupting agricultural price support and other domestic programs. Second, and perhaps more important, we shall assess the program in light of liberal trade policy and realistic farm policy objectives.

If we must criticize the Section 22 and other programs which curb imports, let us not criticize them on the basis of their own efficiency. The major brunt of our disdain should be borne by the original plan inherent in agricultural price support legislation; that is, that the United States can justify and make economically feasible a program which raises domestic prices above world prices of large segments of its agricultural industry without seriously disrupting (1) domestic resource utilization, and (2) historical international production and trade patternization. Section 22 was a logical part of the AAA, and the amazing part is that it was not utilized before September, 1939, or more than four years after it was legislated.

Imports could not help but be attracted by the price programs which were part of the AAA, the Marketing Agreement Act of 1937 and other programs. The various detailed investigations by the Tariff Commission, and the many hearings on Section 22 by the Secretary of Agriculture, will attest to the fact that this device is well-known by United States agricultural interests and has been utilized in fulfilling the original objectives of the price program. The data presented in the previous section and the appendix will demonstrate that the program has been used.

The President, the Secretary of Agriculture and the Tariff Commission are obligated to perform duties set forth by the law. These duties have been performed well. The mechanics for hearing and acting on a complaint are sound and operate orderly and efficiently.

It is possible to argue the economics of decisions made by the three offices mentioned. As stated already, decisions by administrative personnel and advisory boards on foreign trade matters are many times arbitrary, and time only can determine their ultimate effects. The Secretary of Agriculture has a particularly wide range of authority within which he can operate. But what I am saying is that the motivation of the decision is to effectuate a piece of legislation, and these people, even the President, are limited as to what they can get by with under the law. It might be mentioned in passing that the President has used his authority under Section 22 with considerable restraint.

It will not be possible to be so generous in our appraisal of Section 22 and related programs when they are appraised as a part of and in light of our over-all agricultural and trade policies. The principal censure is with

respect to the inconsistent elements in what we have been doing in domestic agriculture and what we say we desire in the politics of international economy. Domestic surpluses have accumulated as a result of our price supports, which result in both overt and subtle attempts to insulate our market against foreign competitors. These bring into use practices which the United States has been urging other nations to abandon in the interest of expanding multi-lateral trade.

The unfortunate cheese incident in the early 1950's is a classic example. After the United States, through its program under the European Cooperation Administration, had encouraged France, Italy and the Scandinavian countries to expand production for the American market, we unpropitiously in July, 1953 erected import quotas on cheese.

The relative arbitrariness of Section 22 which permits action regardless of any trade agreement or other international contract, brings into focus the nature of the ideological schism between our trade and agricultural policies. Gale Johnson places great emphasis on this point, and he emphasizes the significance of the schism. To quote him, "It is apparent that there is a strong tendency for many members of Congress, particularly those holding influential positions on agricultural committees, to hold the position that no interference is to be allowed with any action affecting domestic agricultural interests of programs. International trade is a necessary evil, but an evil that must be controlled and restricted whenever possible."¹⁰ I would emphasize more the nature of the schism rather than the degree.

This same ideological schism carries over into our surplus disposal and technical assistance legislation as embodied in Public Law 480 and the International Cooperation Administration. In one sphere we are using our position of economic power to perpetuate a situation which in another sphere we say we are against. One of the bases for enacting the Agricultural Trade and Assistance Act of 1954 (PL 480) was to increase multilateral trade. I would hate to have to justify its continuance on that basis. Bilateralism and a tendency to subsidize the concentrated business structures have been the more immediate result. And, there has been a tendency for exports and imports to be determined more by fiat than by an international price mechanism. To some economists, the use of quotas¹¹ is a step backward toward the economics of the Middle Ages and the fair price.¹² I prefer to dub the present thinking as neo-mercantilist.

It is the opinion of some that import quotas are needed only to protect the subsidizing export sales program.¹³ Of course, there are opinions to the contrary. Mr. White, in the statement cited, states that the chief effect of the price support and import quotas for U. S. upland cotton has been to move Mexican and other competitive foreign cotton to Europe and the Far East to which, otherwise, United States cotton would have moved. The chief effect was

¹⁰/ Johnson, D. Gale. "Agricultural Price Policy and International Trade" Essays in International Finance No. 19, Princeton University, June, 1954.

¹¹/ Kindleberger, C. P., op. cit., p. 243.

¹²/ Statement by John C. White, Counsel, American Cotton Shippers Association entitled, "United States Cotton and Foreign Trade Policy", op. cit., pp. 823-829.

to give foreign mills an advantage in access to particular qualities less available in the United States crops. The situation with respect to long-staple cotton is quite different, but the conflict in opinion and interests is just as violent.

Asset or Liability?

The fact must be faced that it is becoming increasingly difficult for economists to discover an economic test of efficient specialization on which they can justify rational decision making. This fact is illustrated very well by our two topics of discussion in this paper, here the United States Government has continually intervened to protect the interests of groups of producers, thereby distorting the working of the competitive features of the price mechanism. Indeed, should we even use the term competitive, while looking at the growth of monopolistic potential in business enterprise and government. On what basis can we say asset or liability?

Let's face it, the economic indeterminacy^{13/} of our era has magnified the politics of economic questions greater than at any time in the last 250 years. (This is why I use the term neo-mercantilism in describing certain of our trade policies). This economic indeterminacy has thrown upon those who have the power the responsibility to decide a range wherein price and output shall fall. What with all the ramifications of a decision, how is it possible to say what is the "correct" economic choice for the President when he is presented with a peril point or Section 22 decision on say, dried figs, which affects hundreds of United States producers, thousands of United States consumers, and our relations with countries such as Iraq and Turkey?

International politics aside, this development emphasizes the power struggle between organized economic groups. I am increasingly convinced of Bertrand Russell's contention that power rather than wealth is the fundamental concept in social science.

If I interpret Johnson correctly on agricultural and international trade policy, I am not convinced that his solution is either realistic or workable. Most of us are familiar with his farm policy "solution" but perhaps are not so informed on his implied solutions to problems in international trade. On the one hand, he overworks the too-much-labor in agriculture theme, forgetting the tremendous pent-up efficiency already inherent in United States agriculture, while on the other, he simplifies the manner through which benefits are to be gained from an unfettered trade policy in agricultural products. I simply can't agree that we can use exclusively the classical economics theory of comparative advantage to solve the overriding problems in the 20th century international economic affairs. We can't simply abolish all tariffs, cut out all quotas and presto! solve the farm problem. I say this despite a personal position taken immediately after World War II to the effect that the United States

^{13/} I have borrowed this term from a former professor, Dr. J. B. Condliffe. See his Commerce of Nations, p. 789.

should have eliminated unilaterally all its tariffs. I took the stand for its political effect, however, rather than for the sake of pure economics.

It is difficult to convince a particular group that its interest should be sacrificed to the general public interest. Moreover, the question as to what constitutes the public interest is not an easy one to answer. Somebody has to make a decision as to whether or not the cut-over land of Southern Mississippi plus available labor and other resources will be utilized to produce tung nuts, cotton and slash-pine timber; or shall it remain idle? The tung nut and tung oil quotas help decide this question.

But, even though decisions are made, the answers may not be clear. In the representative political democracies, minority groups sometimes wield power out of all proportion to their economic size. The case of tung, I know well. But take the case of almonds, which constitutes about a half of one per cent of California's farm income. A few years back when there was a possibility that the United States would negotiate a trade agreement with Iran, and thereby reduce the tariff on almonds, the almond growers went to work. Through growers associations and farm groups, sufficient pressure was mobilized to pass a resolution through both houses of the state legislature not just protesting this concession, but asking for the abolition of the whole Trade Agreements program!

With respect to 20th century commercial strangulation between countries. It is a case of obtaining a freer condition of trade. This condition is being constructed despite what we are being told to the contrary by the unreconstructed disciples of Adam Smith. But the condition is being built with different proportions. One who has watched the Organization of European Economics Cooperation emerge and who has watched our own trade policies adjust to this and other situations cannot be too pessimistic, though we get temporarily impatient about the Peril Point and Section 22. And, there's even talk of economic cooperation and a bloc among the Banana Republics! So, we are liberating trade but by a different definition, and we in the United States may be asked to give some more in that regard. My point is that in the broader logic of international specialization of labor, the world and we in the United States seem to be progressing.

The need now is for forbearance among us who though we look upon the Peril Point, Section 22 and other restrictions as liabilities in a very narrow sense, at the same time prefer these arrangements to complete economic isolation or economic anarchy. We have got to constantly watch the almond, the tung, the alsike clover and the blue cheese boys, while at the same time improving the rules of the trade game through organizations such as the General Agreements on Tariffs and Trade (GATT). The external compulsions on the United States improving these rules through better national and international planning are greater than many realize. This nation is now in a phase of its existence in which its dependence on imported raw materials is becoming more than incidental and is even becoming critical in selected areas. I know of no better potential medicine to offer you for the ills of trade world than these two: forbearance and the GATT.