It should be recognized at the outset that we are discussing mainly governmental trade barriers. There are many other barriers of geography, language, history, and culture that place foreign suppliers at an inherent disadvantage compared with domestic sources. While not removable by government decree, these natural, political, and anthropological factors remain an important facet of the problem. They sometimes represent an advantage for the import—as in the case of Scotch whiskey and French perfume; but for most imported goods in the American market, they represent a built-in, invisible tariff that is just as real as a customs duty. Quality for quality, there must exist a definite price differential to overcome buyer resistance to a foreign source as compared with a domestic source of supply. The reasons for the domestic preference vary widely; but most of it is explained by greater difficulties in communication, delivery, and service where imported goods are involved.

Governmental barriers are many and varied in character, from sanitary regulations to internal taxes. This paper treats at length five that appear the most important in the United States: quantitative restrictions, Buy-American policies, marking requiremens, antidumping legislation, and customs practices.

ADMINISTRATIVE SWORDS OF DAMOCLES

It is necessary to observe that, apart from the particular restrictions that may be put into effect, there are statutory provisions for the upward revision of tariffs or the impostion of restrictions on the complaint of an affected American industry whose very existence has an inhibiting influence upon trade. These administrative swords of Damocles are: the escape clause, the national security clause, equalization of cost of production (Section 336 of the Tariff Act of 1930), and embargo for unfair acts (Section 337 of the Tariff Act of 1930).

Section 336 and Section 337 are obsolete and should be repealed. Recent cases have shown that they retain considerable nuisance power. The national security clause has actually been invoked by the President, only in the case of oil imports, but the threat of its use is always there.

The obstacles to trade which have resulted from application of the escape clause are perhaps less significant than the discouragement of potential trade that results from the fear that it may be invoked. The possibility of abuse of the escape clause has been somewhat diminished by the Trade Expansion Act of 1962, since it is now explicit that, for the clause to be invoked, any increased imports must be found to have a direct causal connection with previous tariff concessions. Moreover, by providing alternative remedies of a domestic character in the form of adjustment assistance, the 1962 Act has gone a long way toward recognition of the fact that some domestic readjustments from a general reduction of tariffs must be accepted. It is to be hoped that adjustment assistance will eventually supersede import restrictions as the normal remedy for injury that can be traced to tariff concessions.

NOTES

At the GATT meeting of May 21, 1963, the Ministers agreed that the trade negotiations to start May 4, 1964, should "deal not only with tariffs but also with non-tariff barriers." The Trade Negotiations Committee charged with elaborating the trade negotiation plan was instructed to consider:

"The rules to govern and the methods to be employed in the treatment of non-tariff barriers, including inter alia discriminatory treatment applied to products of certain countries and the means of assuring that the value of tariff reductions will not be impaired or nullified by non-tariff barriers." (GATT Press Release No. 794, May 29, 1963.)

The classic study of U.S. barriers is Percy Bidwell's THE INVISIBLE TARIFF published in 1939. The outstanding recent study is *INVISIBLE TRADE BARRIERS BETWEEN CANADA AND THE UNITED STATES* (1963) by Francis Masson and H. Edward English, for the *Canadian-American Committee,* sponsored by the *National Planning Association* (*U.S.A.*) and the Private Planning Association of Canada. That study contains valuable background and statistics on applications of the U.S. escape clause, arbitrary valuation, antidumping act, and marking requirements. It is long on facts but tries not to draw policy conclusions. The present paper is not so inhibited.

The escape clause is now embodied in Sections 301(b) and 351 of the Trade Expansion Act of 1962, 19 U.S.C.A. §§ 1901, 1981 (Supp. 1964); the national security clause in Section 232 of the Trade Expansion Act of 1962, 19 U.S.C.A. § 1862 (Supp. 1964). Sections 336 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C.A. §§ 1336, 1337 (1960), are not changed by the 1962 Act.

Section 336 is obsolete because it embodies the theory that tariffs should equalize costs of production at home and abroad, which would stifle all trade in competitive products. It has been inapplicable for twenty-nine years to articles that are the subject of trade agreement concessions (Section 2(a) of Act of June 12, 1934; 19 U.S.C.A. § 1352 (1960), as amended 19 U.S.C.A. § 1352 (Supp. 1964) and therefore can be applied to very few products. However, in the case of Brooms Made of Broomcorn, Investigation No. 336–121, January 17, 1962, the Tariff Commission found that the present duty does not equalize the differences in costs of production and that, to do so to the fullest extent permissible under