

Section 336, it is necessary to apply the duty on the basis of the selling price of American-made brooms. The President refused to do so, without further explanation, on the ground that the Commission's report did not show need for the duty to be so applied. White House announcement of February 15, 1963.

Section 337 is obsolete because it has been applied almost exclusively in patent cases, for which it is peculiarly unsuitable, since the Tariff Commission cannot adjudicate the validity of the patent or the issue of infringement. The Tariff Commission has repeatedly requested repeal; and in 1962, the Supreme Court handed down a decision that casts considerable doubt upon its constitutionality. Section 337 provides that the importer may appeal on questions of law from the Tariff Commission to the Court of Customs and Patent Appeals and that the matter then goes to the President for decision. *Glidden v. Zdanok*, 370 U.S. 530 (1962), indicates that the Court of Customs and Patent Appeals may not constitutionally render such an advisory opinion. Nevertheless, the Tariff Commission considered another case in 1963: *Folding Doors*, Investigation No. 337-22, June 7, 1963 (dismissed).

The first seven petitions, five by workers and two by firms, under the Trade Readjustment provisions of the Trade Expansion Act of 1962, were turned down by the Tariff Commission on various grounds, principally the lack of a causal connection between increased imports and trade agreement concessions.

QUANTITATIVE RESTRICTIONS

The United States has never imposed quantitative limitations upon imports in order to protect its balance of payments—the most common reason for such restrictions in the post-war world. Rather, it has used import quotas as adjuncts to agricultural policies and for protectionist reasons. They fall into four categories: absolute quotas, tariff quotas, quotas established by international agreement, and foreign, so-called “voluntary” quotas on exports to the United States.

The GATT forbids quantitative restrictions as a general principle but contains elaborate exceptions for agricultural products under domestic controls, for conservation of natural resources, and for restrictions imposed to safeguard the balance of payments.

The inherent vice of all quotas, of course, is that they distort the normal patterns of trade and do not permit market forces to operate freely. In this respect, they are worse than customs duties. A limit on the quantity of any particular commodity that may come in either creates a chaotic struggle for priority—distorting normal business decisions in the interest of participation in the limited supply—or, like a cartel, involves some mechanism for allocation of the quota among exporters or importers or both. The disturbance to trade resulting from such restrictions can hardly be exaggerated. Because of them, importers have been unable to gain access to a source of supply, have had to pay premiums for quotas assigned to others, or have made their purchases when they were able to get the goods at the additional cost of higher prices or storage charges to keep them until needed. These handicaps to importers have been reflected in damage to consumers, in terms either of higher prices or limited supply or both.

U.S. absolute quotas

Absolute quotas are presently in effect by virtue of agricultural legislation designed to set a high domestic price level for the following farm products and to protect that price by limiting the quantity of imports: raw cotton and cotton wastes, wheat and rye, cheese, butter substitutes, dried milk and cream, and peanuts. In addition, under the Sugar Act, there is a quota on sugar imports.

By virtue of the national security clause and a Presidential finding that imports of residual oil threaten the security of the United States, there are quotas on petroleum and products; and under the escape clause, there are quotas on lead and zinc.

A recent study by the United States-Japan Trade Council indicates that in the years 1959-1961 these various quotas (including cotton textiles, discussed below) affected approximately 14 per cent of all U.S. imports.

U.S. tariff quotas

Tariff quotas are higher tariffs on imports, which come into effect only after a certain quantity has been reached. Like absolute quotas, they may be global or country by country. They have aspects of both tariffs and quotas. If the post “break-point” duty is prohibitive, they operate exactly like absolute quotas; if the higher duty is one that can be surmounted, then they seriously distort the patterns of trade and invite cartel-like controls.

U.S. tariff quotas are in effect on tuna canned in brine, ground fish fillets (fresh or frozen), cattle, potatoes, fresh butter, milk and cream, walnuts, and stainless steel flatware.