

1953

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Recommended Citation

Note, A Tariff Primer, 2 Clev.-Marshall L. Rev. 166 (1953)

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A Tariff Primer

by Stanley J. Emerling*

NATIONS HAVE ALWAYS ATTEMPTED to obtain the raw materials and products of other lands in order to advance their own economic prosperity. They have sought to achieve this economic prosperity either by territorial expansion, peacefully or forcibly, or by engaging in world trade. We shall concern ourselves here only with the prospects of peaceful world trade.

Though it is an oversimplification to attribute the success of nations to world trade alone, nevertheless, it plays an important part. Naturally ethnic and political considerations are guide posts in ascertaining a policy of world trade. In addition, two basic ingredients, namely, natural resources and the ability to transform these resources into useable products, are of utmost importance. It is these two factors that differentiate the "have" from the "have not" nations of the world and which are part and parcel of the argument supporting free trade based upon the "law of comparative advantage." But before proceeding further, it would be best at the outset to narrow the scope of this article so as to exclude from consideration the problems of national security, political pressures and special interest groups.

One of the considerations involved in the application of the law of comparative advantage is the manner in which the natural resources of the earth are distributed. Nations such as the United States are fortunate that so much of the basic material of production is available to its people within the geographical boundaries of the country. Other countries similarly have the same advantage.

Closely allied to natural resources is the manpower potential of a nation, together with the mechanical ability to translate ideas and material into a positive product. Actually these two components do not always appear together as evidenced by the staggering populations of such countries as China and India who have little or no ability to translate their resources into productive channels. It is this inherent ability to create and to invent which has been a cornerstone of American economic success.

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Comparative advantage in itself is not a complex doctrine. Its mechanics are plausible, but its application creates many difficulties. It is by no means a panacea for the solution of the world's problems.

In the light of these considerations we may in a simplified manner discuss the workings of the law of comparative advantage. The basic premise upon which it operates is that the product which one country is able to produce at a relatively less comparative cost than another country should be specialized in by the former country until the costs of production of this item in the two countries is equalized. Provided however that the latter country is able to produce some other product which bears this same relation to the former country. Thus, for example, in ascertaining what product should be specialized in an assumed trade situation between the United States and Brazil involving automobiles and coffee, it is evident that the relative effort of production for automobiles in the United States is less than in Brazil, while the relative effort to produce coffee is less for Brazil than for the United States. Consequently the United States should increase automobile production by transferring resources from coffee production, and Brazil the reverse until the relative cost ratios between the countries becomes equal. It is immediately apparent that such a balancing of world potential along these lines raises many problems. Among these are the distances involved in transportation, the great number of nations that a country such as the United States may be trading with, the need of countries for critical goods for self-defense and the great population migrations that might be caused within any nation in order to make such a system operate. In an idealistic situation of a unified global society, a free trade concept, unbridled by nationalistic tendencies or prejudices and without regard for state boundaries, would be able to follow a more or less absolute application of the doctrine of comparative advantage. But as with all other theoretical schemes, certain definite realities must be faced, as well as a realization that in many respects due to ethnic differences as well as cultural levels that a certain conflict with present living standards, educational progress and cultural attachment in any given nation would be bound to exist. It is with these realities and conflicts of principle and custom that we come face to face with the necessity of regulating the flow of trade in order to reflect best the interests

of the several nations. In this respect a discussion of the tariff regulations of the United States and their applications at law is appropriate.

But before proceeding into such a discussion it is imperative to consider some of the aspects and needs of a regulatory trade policy. One of the primary arguments in support of a tariff program is the need to protect infant industries. Though this form of tariff is still applicable even today when a country may first start to produce a product which it had formerly only bought from some other nation, it is essentially only practically applied to the new industries in relatively new nations. The logic of a tariff which encourages the advancement of new industries and which attempts to aid their development by keeping the price of the same type of foreign made article at a higher price so that the citizens will buy the "home made" product in preference to the foreign, is easily defended on several grounds. The product may be one of extreme importance in establishing the economic soundness of the nation so that a diversity of products may be attained. It may be one which is critical to the self-sufficiency of the nation in the event of international disturbances.

On the other hand, no matter how valid the argument may be in the beginning for a tariff to encourage infant industries, there comes a time when these protected industries are no longer infant and may well in fact be the titans in their fields. So at this point, the proponents of tariffs must use an entirely new rationale in order to continue this favorable policy. Now, the protection of home industry becomes their battle cry. It is argued that home industries need protection from unfair competition from foreign producers who desire to undersell them in order to destroy them. Or, as in the case of the products such as perfume, wines or watches, where foreign producers of these articles either have the technical or geographical advantage over the United States in the production of these items, it would not be improbable that American citizens would prefer to purchase them from France or Switzerland in preference to the American product. Thereupon the American producers would be sure to suffer and possibly, depending naturally on the product, its widespread use, and degree of excellence over the American article, be forced to discontinue their manufacture of these things.

Hand in glove with this idea is the corollary that tariffs are

necessary in order to protect the living standards of the American worker. It is an irrefutable fact that the American standard of living is the highest found anywhere in the world. Statistics as to the number of automobiles, telephones, television sets, and bathtubs will bear this out. Consequently, in order to protect this standard of living it is necessary to apply tariffs to products produced in low cost labor areas. This argument has considerable merit.

A more subtle refinement of this same problem is the equalize-the-cost-of-production argument. It says that the tariffs should reflect a variable factor which would equalize all the individual costs such as manpower, overhead, and methods. In this manner the cost picture would be the same for an article of similar description produced in a foreign country or the United States. Undoubtedly a policy of this nature would be applied to those countries situated at such a distance from the United States as to make shipping charges a prohibitive factor in profitable trade.

Another major argument is the necessity of protecting and promoting home industries which are vital to the self sufficiency and self defense of the nation. Needless to say, this is a vital and impregnable argument and as an instrument of foreign policy and common sense no more need be said.

Though admittedly some arguments support the tariff question merely on a revenue basis, as was the purpose in the beginning, it has become much more than that, and revenue has ceased to be an important factor. No one will dispute the important place a tariff policy may play in foreign affairs as we have made use of it with our possessions and territories as well as with foreign countries under the Reciprocal Trade agreements. A cursory examination of the aims of a tariff policy leads undeniably to the conclusion that as a short term project much may be said in its support. On the broader issue of an intelligent long term policy these advantages tend to disappear. Both the tariff and the application of comparative advantage are so closely allied that the solution to one might well be the solution to the other.

As with any other system of regulation, domestic or foreign, there must be a basis in law upon which it is formulated. And this is as true of tariff policy as any other. The authority for the regulation of foreign commerce in the United States is found in the Constitution in Article I, Section 8.

Clause 1. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Clause 3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

In *Gibbons v. Ogden*¹ Chief Justice Marshall said of the commerce clause: "The Constitution informs us, to commerce 'with foreign nations, and among the several states, and with the Indian tribes.' It has, we believe, been universally admitted that these words comprehend intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend."

Later in another case further words from the Supreme Court were uttered to show that the regulation of commerce was a necessity in order to insure the safety of the United States from any source. In the *Marigold*² case it was said: "Congress are, by the Constitution, vested with the power to regulate commerce with foreign nations; and however, at periods of high excitement, an application of the terms 'to regulate commerce' such as would embrace absolute prohibitions may have been questioned, yet, since the passage of the embargo and non-intercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt, that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure should be demanded by the safety or by the important interests of the entire nation. Such exclusion cannot be limited to particular classes or descriptions of commercial subjects; it may embrace manufactures, bullion, corn, or any other thing. The power, once conceded, it may operate on any and every subject of commerce to which the legislative discretion may apply it."

The Supreme Court later gave an answer to the antagonists of a protective trade policy in the *J. W. Hampton Co.*³ case in which the court went into the legality and the right to establish a flexible tariff scale: "It is contended that the only power of Congress in the levying of customs duties is to create revenue

¹ *Gibbons v. Ogden*, 9 Wheat. 1.

² *U. S. v. Peter Marigold*, 9 Howard 566.

³ *J. W. Hampton, Jr. & Company v. U. S.*, 276 U. S. 394.

that it is unconstitutional to frame the customs duties with any other view than that of revenue raising. It undoubtedly is true that during the political life of this country there has been much discussion between parties as to the wisdom of the policy of protection, and we may go further and say as to its constitutionality, but no historian, whatever his view of the wisdom of the policy of protection, would contend that Congress since the first Revenue Act in 1789 has not assumed that it was within its power in making provision for the collection of revenue to put taxes upon importations and to vary the subjects of such taxes or rates in an effort to encourage the growth of the industries of the nation by protecting home production against foreign competition. It is enough to point out that the second act adopted by the Congress of the United States, July 4, 1789 (chap. 2, 1 Stat. at L. 24) contained the following recital:

“Sec. 1. Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandises imported:
Be it enacted, etc.”

In this first Congress sat many members of the Constitutional Convention of 1787. This court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Convention of 1787. This court has repeatedly laid down the of our Constitution were actually participating in public affairs, long acquiesced in, fixes the construction to be given its provisions. (*Myers v. U. S.*, 272 U. S. 52, 175, 71 L. Ed. 160, 190, 47 Sup. Ct. Rep. 21, and cases cited.) The enactment and enforcement of a number of custom revenue laws drawn with a motive of maintaining a system of protection since the Revenue Law of 1789 on matters of history. * * * Whatever we may think of the wisdom of a protection policy, we can not hold it unconstitutional. So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action * * * and so here the fact that Congress declares that one of its motives in fixing the rates of duty is so to fix them that they shall encourage the industries of this country in the competition with producers in other countries in the sale of goods in this country, cannot invalidate a revenue act so framed.”

Later on in an attack on the legality of the Tariff Act of 1922 by the Trustees of the University of Illinois,⁴ the Court went into the aspects of taxation and the authority of Congress to regulate commerce and came to a conclusion that Congress may entirely prohibit any such commerce and that no state may override such action. It was said that this tariff act was to encourage the industries of the United States, and further stated: "The laying of duties is 'a common means of executing the power' 2 Story Const. S1088. It has not been questioned that this power may be exerted by laying duties 'to countervail the regulations and restrictions of foreign nations.' Id. p. 1087. And the Congress may, and undoubtedly does, in its tariff legislation consider the condition of foreign trade in all its aspects and effects."

It is evident from the examination of these cases that the proponents of a tariff policy are well supported by Constitutional authority and logic depending on the time and necessity of the situation. Economically also there are many instances in which a reduction in or denial of tariff policy would be to the detriment of our country. The only point worth taking in summary of this complex problem is the fact that a mere permissive use of a tariff doesn't necessarily mean that the country's best interests are always served by a too rigid application of such measures. The reciprocal trade agreements of the last decade or so are proof of this. It might be well to end this paper with a quotation from the *Inman Steamship* case⁵ which sums up the universal feeling of a trade restriction policy: "The commerce clauses of the Constitution had their origin in a wise and salutary policy. They give to Congress the entire control of the foreign and interstate commerce of the country. They were intended to secure harmony and uniformity in the regulations by which they should be governed. Wherever such commerce goes, the power of the nation accompanies it, ready and competent, as far as possible, to promote its prosperity and redress the wrongs and evils to which it may be subjected."

⁴ Board of Trustees of the University of Illinois v. United States of America, 289 U. S. 48.

⁵ The *Inman Steamship Co. v. Edward C. Tinker*, 94 U. S. 238.