AN ECONOMIC ANALYSIS OF THE ESCAPE CLAUSE IN RECIPROCAL TRADE AGREEMENTS

by

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TABLE OF CONTENTS

LIST OF TABLES

Chapter I

INTRODUCTION

The practice of providing protection for United States industry, through tariff barriers, is as old as the nation itself, but for many years there has been a divergence of opinion as to the proper extent of this protection. One group, representing importing firms and mass production industries who need an export market, has favored lowering tariffs to stimulate international trade; while the other group, representing the handicraft industries, agriculture, and other highly protected activities, has fought vigorously for all the protection it could get. The strength of these two groups has fluctuated from time to time in the past. In 1930, with the passage of the Smoot-Hawley Act which established the highest tariff barriers in United States history, the battle was resolved in favor of the protectionists. But this law and the economic down-trend of the early thirties brought our international trade to a virtual halt, leading to universal retaliation on the part of foreign countries and thus deepening the depression.

The pendulum swung the other way in 1934 with the adoption of the Reciprocal Trade Agreements Act. This law paved the way for the subsequent general tariff cutting program of the United States. Faced with the threat of potential tariff cuts that would allow imports to compete more vigorously with domestic products, many of our industries set up a clamor for a provision that would permit them an "escape" from a commercial treaty if imports increased, as a result of tariff concessions, to their disadvantage. Though the trade agreements program has

been extended from time to time, the strength of the protectionist interests is indicated by the growth of the "escape" provision. And still the representatives of this group--not satisfied with their achievements--profess that they have not yet obtained the tariff protection that is rightfully theirs.

On the other hand, spokesmen for other industries, economists, and some statesmen are disturbed by this trend, believing that the advantages accruing to a small segment of our economy from the use of the "escape clause" is far outweighed by the simultaneous detriment to the economy as a whole. These groups are certain that the "escape" provision operates in a direction to prevent proper allocation of economic resources and the development of freer trade. If this is true, there is a subsequent disadvantage to domestic consumers and to our export industries. It is particularly contrary to the desirability of stimulating international trade between the United States and foreign countries as a contribution to the solution of balance of payment and dollar shortage problems which have long plagued the world.

With these two opposite views in mind, it is the primary objective of this thesis to present an analysis of the "escape clause" directed at determining whether this provision is a desirable--from an economic viewpoint--part of our international trade program. A conclusion on this point will be broached only after a detailed analysis of the current version of the "escape clause", an investigation of the manner in which the Tariff Commission has administered the provision in the years 1948-1954, and a close scrutiny of the industries which have been involved in past "escape clause" applications. After we have seen

whether the "escape" provision has appeared essential to the livelihood of the major producers represented in "escape clause" applications and whether the reliance on such a provision could have (or has) done the industries any good in the long run, we may then evaluate the arguments for retaining the "escape clause" as a permanent feature of our reciprocal trade legislation.

Chapter II

FORE-RUNNERS OF THE ESCAPE CLAUSE

In order to acquaint the reader with the background of this topic it is necessary to preface the thesis with a brief outline of the development of the "escape clause". In addition to clearing the path for our later discussion, this chapter should also serve to distinguish between the general "escape clause" and the variety of provisions, found in commercial treaties and trade agreement laws, which have also been referred to as "escape clauses". This is not to deny that these provisions may accomplish the same result, i.e., relief for domestic producers from increasing imports, but the specific term--"escape clause"--is now generally reserved to the particular provision which is the subject of this thesis. The discussion of "escape" provisions, in the broader sense of the term, will be limited to this chapter.

We shall first look at some of the predecessors of the so-called general "escape" provision. The Tariff Act of 1930,[1] commonly known as the Smoot-Hawley Act and regarded as the apex of protectionism in the United States, is an interesting document with which to begin this study of the evolution of the "escape clause" because it includes provisions which closely approximate the "ideal escape clause" in the eyes of many present day protectionists.[2] The reactivation of two of these

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[1]Public No. 361, Tariff Act of 1930, (71st Cong., 2d sess.), 1930.

[2]Commission on Foreign Economic Policy, Minority Report, (Washington, January 30, 1954), p. 10.

provisions, in the form of an "escape clause", would fulfill the aims of the most ardent high tariff advocate.

The first of these provisions, Section 336 (a),[3] provides for the adjustment of the United States tariff to equalize the differences in the costs of production of like products in the United States and the principal competing country. In other words, if the good is produced cheaper abroad--thus allowing it to enter the United States and compete with a domestic product--we could simply raise the tariff on that commodity to cover the differences in costs of production and by this means guarantee that our home-produced goods faced no price competition from imports. Applications for relief under this provision are handled much like the applications under the general "escape clause" and some of the more recent applications are listed in Appendix "B". This section was rendered inoperative, insofar as it applies to any article covered by a reciprocal trade agreement, by Section 2 (a) of the 1934 Reciprocal Trade Agreements Act.[4]

Domestic producers who steadfastly contend they have been robbed of their "day in court", i.e., the opportunity to litigate objections to tariff concessions that affect their products, would also like to see Section 516 (b) of the Tariff Act of 1930[5] restored to the trade agreements laws. This article provides that an American manufacturer, producer, or wholesaler, who is dissatisfied with the classification

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[3]Reproduced as Appendix "A"

[4]Public No. 316, An Act to Amend the Tariff Act of 1930, (73d Cong., 2d sess.), 1934, Sec. 2 (a).

[5]Reproduced as Appendix "C".

or the present rate of duty assessed on an imported article, may file a complaint with the Secretary of the Treasury setting out what he believes to be the proper rate or classification. This section also prescribes the procedure for litigation of appeals if the Secretary rejects the complainant's suggestions and such appeals may go as high as the Court of Customs and Patent Appeals. But this section, too, was restricted by Section 2 (a) of the 1934 Act and now applies only to articles not included in reciprocal trade agreements.

We may also consider Section 350 (a)--the introductory section of the Reciprocal Trade Agreements Act of 1934[6]--as a fore-runner of the modern "escape clause". This is a cleverly worded article which has been interpreted both as an "escape clause" and as a tariff cutting device although the legislation, of which it is a part, was ostensibly a means of increasing our exports to alleviate depression conditions. Since the purpose of the Reciprocal Trade Agreements Act--to stimulate trade by reducing tariffs--was an abrupt change from the 1930 Smoot-Hawley Act, it was expedient to allay the fears that the domestic producers would be injured by wholesale tariff cuts. To quiet the opposition to the new program the administration pointed out that this section, 350 (a), could be and would be interpreted to prevent injury to domestic producers.[7]

It is fair to assume that the broad language of 350 (a) was really meant to allow an overall tariff cutting program rather than

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[6]Public No. 316, An Act to Amend the Tariff Act of 1930, (73d Cong., 2d sess.), 1934, Sec. 350 (a). See Appendix "D".

[7]House of Representatives Document 273, Message from the President of the United States, (73d Cong., 2d sess.), 1934.

to provide a relief provision. Only once has this section been interpreted to grant relief to an American producer. In 1940 it was used as the basis for negotiating a supplemental agreement with Canada for the purpose of restricting imports of fox furs into the United States.[8] The European markets for such furs had been closed at the outset of World War II and producers in Norway and Sweden were directing their exports to the American market, much to the disadvantage of our domestic producers.

It is also important to distinguish between the "escape clause"--a post treaty provision--and the type of provision which provides for pre-treaty precautions, i.e., "peril point" procedure. The purpose of the "escape clause", as the name implies, is to provide relief for domestic industries after a tariff concession in a trade agreement has caused an injurious increase in imports. "Peril points" refer to the limits to which a tariff rate on a commodity may be raised or lowered without permitting imports to "imperil" the domestic producers of the product. Both types of provisions are designed to accomplish the same thing--protection of domestic industry against undue import competition--yet the procedure involved in each is much different.

This pre-treaty consideration was first provided for in Section 4 of the 1934 Act[9] to help ward off the fears accompanying the transition from the Smoot-Hawley era to the trade agreements program. One

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[8] U.S. Statutes at Large, Supplementary Agreement with Canada, 1939, (76th Cong., 2d sess., 54 Stat., Part 2, 2414), 1941.

[9] Senate Report 871, Reciprocal Trade Agreements (73d Cong., 2d sess.), 1934, p. 3.

provision of this section required public notice of the intent to negotiate a trade agreement in order that interested persons would have an opportunity to present their views on the proposed treaties. Another provision required that the President consult with the Tariff Commission and the Departments of Agriculture, State, and Commerce before concluding any commercial agreement. To comply with these directives, the Trade Agreements Committee was established to supply the President with "information and advice" from the various government agencies,[10] and the Committee for Reciprocity Information was organized to give interested persons an opportunity to present their views on proposed trade agreements.[11] The function of these committees and their place in the trade agreement negotiating procedure is indicated in Appendix "E".

Throughout the remainder of the 1930's and early 1940's, State Department officials emphasized the merits of "peril point" procedure and rejected the demands for more specific guarantees (escape clauses) that domestic producers would not be hurt by increasing imports. The pre-treaty precautions were cited by State Department officials as sufficient insurance to obviate the need for an "escape clause". The "peril point" procedure of today, which has grown out of this earlier provision, is much more restrictive and specific than its pioneer

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[10] Tariff Commission, Operation of the Trade Agreements Program, June, 1934 to April, 1948, Part II, History of the Trade Agreements Program, (Washington, 1949), p. 28.

[11] Ibid., p. 29.

counterpart. Under the present law,[12] the Tariff Commission is required to set the "peril points" on each commodity that is being considered for a tariff concession in trade agreement negotiations, i.e., the Commission must inform the President of the extent to which tariffs may be raised or lowered without causing serious injury to the domestic industry producing such products. The President may disregard this advice, if he chooses, but if he does so he must explain to Congress the reasons for rejecting the Commission's recommendations.

The "peril point" procedure is not now generally regarded as a substitute for the "escape clause"; rather it is considered as extra insurance--by the protectionist interests--against tariff reductions. This type of provision has been highly touted as a superior method of accomplishing the protectionist objective for it does not involve the foreign repercussions which may result from "escape clause" action. The detailed arguments for and against the "peril point" procedure go beyond the scope of this paper, however, so with this brief reference we shall proceed to other fore-runners of the present "escape clause".

Other legal provisions are, at times, referred to as "escape clauses". Probably the most important of these is Section 22 of the Agricultural Adjustment Act--a provision which is still a very important part of our tariff legislation.[13] The President is authorized,

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[12]Public Law 50, Trade Agreements Extension Act of 1951, (82d Cong., 1st sess.), 1951. Sec. 3 (a). See Appendix "F".

[13]Public No. 320, To Amend the Agricultural Adjustment Act, and for other purposes, (74th Cong., 1 st sess.), 1935. See Appendix "G".

by this provision, to use import quotas to grant domestic producers of agricultural products relief from import increases. The ostensible purpose of this law is to prevent the importation of farm produce that would interfere with any agricultural commodity price support program. The philosophy behind this legislation is that it is foolish to support prices and control output of domestic commodities if we do not also control the imports of like commodities. Such an "escape" from imports of farm products must necessarily accompany our tariff legislation as long as we continue an agricultural program aimed at separating domestic and world prices for the same commodities. A tabulation of the more recent Tariff Commission investigations under this provision may be found in Appendix "H".

The now defunct National Industrial Recovery Act of 1933 also contained a provision for post-treaty relief.[14] The section on "The Code of Fair Competition" provided that the President should be permitted to restrict imports if an investigation by the Tariff Commission revealed that competitive articles were being imported in such quantities as would render the "Code" ineffective. The authors of the Act no doubt anticipated that it would be unwise to attempt to restrict cut-throat competition among domestic producers if imports were permitted to enter the United States without such restrictions imposed upon them.

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[14] Public Act 67, National Industrial Recovery Act, (73d Cong., 1st sess.), 1933, Sec. 3 (e) Title I.

In the 1938 trade agreements negotiated with Canada and Great Britain we have another clause which has been referred to as an "escape clause".[15] The language of this provision forecasts things to come because of specific references in the text of the agreements to "serious injury to domestic producers". In brief, the provision permitted withdrawal or modification of concessions or the imposition of import quotas if a third country, through the "most favored nation" clause, received the major benefit of a concession granted by the United States; provided that imports increased so as to threaten serious injury to our domestic producers. Under a similar treaty provision, tariff concessions were revoked when it was discovered that China was getting the lion's share of the benefit from a tariff concession granted to Switzerland on embroidered handkerchiefs.[16]

There are a host of other provisions that have also been referred to as "escape" clauses, e.g., reservations allowing withdrawal from a commercial treaty if foreign countries discriminate against United States exports, and phrases designed to protect the United States against wide variations in the exchange rate of a country with which we have a trade treaty. Without discussing any more of these provisions, it is hoped that attention has been called to the fact that the evolution of the "escape clause" has been a more or less gradual

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[15] U.S. Statutes at Large, Reciprocal Trade Agreement with Canada, 1939, (76th Cong., 1st sess., 53 Stat., Part 3, 2355), 1941.

[16] U.S. Congress, House, Committee on Ways and Means, Extension of Reciprocal Trade Agreements Act, Hearings, 78th Cong., 1st sess., on H.J. Res. 111, (Washington, 1943), p. 317. (Revised).

development. But perhaps the most important point to be gotten from this chapter is the distinction between the provisions discussed here and the general "escape clause" which will be dealt with throughout the rest of the thesis.

Chapter III

THE ESCAPE CLAUSE AND ITS EVOLUTION

We shall now turn to a discussion of the legal provision which bears the technical name "escape clause" at the present time. Beginning with what is frequently regarded as the first edition of the modern "escape" provision, we shall follow its growth to 1954. This discussion will also include an analysis of the present wording of the clause.

The prototype of the general "escape clause" appeared in Article XI of the trade agreement with Mexico which became effective January 30, 1943.[1] This provision was designed to end the search for a clause which would appease protectionist interests and at the same time prove diplomatically acceptable. Some writers,[2] however, date the origin of the "escape clause" to Article XII of the treaty with Argentina[3]--October 14, 1941--nearly two years earlier. To note the differences between these two provisions we shall examine them side by side.

Article XII of the Argentina Treaty:

> If the Government of either country should consider that any circumstance or any measure adopted by the other Government, even though it does not conflict with the terms of

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[1] U.S. Statutes at Large, Reciprocal Trade Agreement with Mexico, 1943, (78th Cong., 1st sess., 57 Stat. Part 2. 833), 1944.

[2] Irving B. Kravis, "The Trade Agreements Escape Clause," The American Economic Review, XLIV (June, 1954), 321.

[3] U.S. Statutes at Large, Trade Agreement with Argentina, 1942, (77th Cong., 2d sess., 56 Stat. Part 2. 1696, 1697), 1943.

> this agreement, has the effect of nullifying or impairing any object of the Agreement or of prejudicing an industry or the commerce of that country, such other Government shall give sympathetic consideration to such representations or proposals as may be made with a view to effecting a mutually satisfactory adjustment of the matter....

Article XI of the Mexican Treaty:

> If, as a result of unforeseen developments and of the concession granted on any article enumerated and described in the schedules annexed to this agreement, such article is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or similar articles, the Government of either country shall be free to withdraw the concession, in whole or in part, or to modify it to the extent and for such time as may be necessary to prevent such injury....

The provision in the Argentine treaty is couched in nearly as vague and broad terms as is Section 350 (a) of the 1934 Act. Its closest resemblance to the modern "escape clause" is found in the words "prejudicing an industry", but this phrase makes no mention of any connection between tariff concessions granted and the resultant increase in imports which may "prejudice" a domestic producer.

Article XI of the Mexican treaty is much more explicit as to its purpose. It notes the concession granted, the increase in imports, the resultant injury or threat of injury to domestic producers, and the alternative to withdraw the concession to correct the situation. Furthermore, it is the Mexican treaty provision which was later adopted almost verbatin in Executive Order 9832.[4] As we shall see, all changes since that time have been additions to, or deletions from, this basic clause. For these reasons it seems correct to regard the

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[4] 3CFR, 1947 Supp., p. 127. See Appendix "I".

Mexican treaty provision--not the Argentine provision--as the first general "escape clause".

Though the demand for more protection for American industry became more urgent as the volume of international trade grew under the Reciprocal Trade Agreements program during the late 1930's and early 1940's, the war years served to slow down this trend. Since private international trade was brought to a near stand-still by the war, there was little agitation, for the most part, to incorporate the newly developed "escape clause" into the legislation. There was, however, a surge of complaints from domestic producers that accompanied an amendment of the 1945 Trade Agreements Extension Act.[5] Whereas the President had been empowered by the 1934 Act to adjust tariffs up or down 50 percent of the 1934 level, the 1945 amendment permitted the same 50 percent change in tariffs, but moved the base to January 1, 1945. Thus, if a duty had already been reduced the maximum 50 percent, it could now be reduced another 50 percent of the 1945 level. The argument advanced in support of this move was that many tariff rates had already been reduced to the point where the United States had little left with which to bargain in negotiating post-war trade agreements.

With the return of peace, demands increased for a change in the trade agreement laws which would make mandatory the increase of tariffs through "escape clause" procedure when an industry was being injured by increasing imports. The lead and zinc mining interests,

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[5]Public Law 130, Trade Agreements Extension Act of 1945, (79th Cong., 1st sess.), 1945.

in particular, were behind this movement.[6] Many industry representatives who appeared at the congressional hearings, concerning the extension of the Reciprocal Trade Agreements program, asserted that they had become convinced that the "escape clause" would never be effective if left to the discretion of the Tariff Commission and the President.[7] Nevertheless, the majority of these people seemed to regard the provision as better than nothing.

This period found the staunchest opponents of tariff reductions--the watch, glass, and pottery interests--harrassing the congressional committees for a revision of the law to strengthen "escape clause" procedure in their favor. Walter W. Cenerazzo, representative of the American Watch Workers Union and perennial witness at congressional hearings on tariff matters, expressed the argument of his group thus: "nowhere and nohow in the administration of this program can any American industry, unless it first goes out of business, obtain relief."[8] A more colorful statement, which also summarizes the attitude toward the "escape clause" at that time, is that of Donald P. Loker, representative of the California Fish Canners Association--"as far as we are concerned, this type of post-mortem inquiry (escape clause) into the cause of death may be of certain interest but it will not revive the corpse."[9]

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[6] U.S. Congress, Senate, Committee on Finance, 1945 Extension of the Reciprocal Trade Agreements Act, Hearings, 79th Cong., 1st sess., on H.R. 3240, Revised, (Washington, 1945), p. 276-279.

[7] U.S. Congress, House, Committee on Ways and Means, Reciprocal Trade Agreements Program, Hearings, 80th Cong., 1st sess., on the Operation of the Trade Agreements Act and the Proposed International Trade Organization, (Washington, 1948), Part 2, p. 1371.

[8] Ibid., p. 543.

[9] Ibid., p. 582.

Before negotiations got under way in 1947 at Geneva on the General Agreement on Tariff and Trade (GATT), President Truman issued Executive Order 9832,[10] prescribing a standard "escape clause". This marks the advent of the "escape clause" as a mandatory provision in all new trade treaties and formalized the "escape clause" procedure. This order specified that the Tariff Commission must investigate applications for relief under the "escape" provision and inform the President if any modification in tariff was needed to protect the domestic industries from serious injury from imports. Article XIX, the "escape clause" in the GATT, is reproduced as Appendix "J".

Even though the "escape clause" was worded differently in each of the Executive Orders--9832, 10004,[11] and 10082[12]--all of which prescribed procedures for the administration of the Reciprocal Trade Agreements program, we find very little change in the substance of the provision between 1943 (the Mexican treaty) and 1951. In fact, the only significant addition during this period appears in Executive Order 10082 (1949). This document includes the provision that a "relative" increase in imports--compared to domestic production--should be admitted as evidence of serious injury in an "escape clause" investigation.

The "escape clause" underwent its only major revision, to date, in the drafting of the 1951 Trade Agreements Extension Act.[13] Most of the

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[10] 3 CFR, 1947 Supp., p. 127.

[11] 3 CFR, 1948 Supp., p. 231. See Appendix "I".

[12] 3 CFR, 1949 Supp., p. 127. See Appendix "I".

[13] Public Law 50, Trade Agreements Extension Act of 1951, (82d Cong., 1st sess.), 1951. See Appendix "F".

changes, however, served merely to bring the language of the clause into line with the more realistic interpretation which the Tariff Commission had already applied to the old version of the clause. Section 6 of the 1951 Act is the current version of the "escape clause"--

> Sec. 6 (a) No reduction in any rate of duty or binding of any existing customs or excise treatment, or other concession hereafter proclaimed under section 350 of the Tariff Act of 1930, as amended, shall be permitted to continue in effect when the product on which the concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products.

The 1951 Act accomplished three changes in the language of the clause in addition to incorporating the previously mentioned change made by Executive Order 10082. In the revised "escape clause", the phrase--"as a result of unforeseen developments"--was omitted; injury to a domestic producer was considered cause for relief even if it were only partly attributable to the tariff concession; and a binding of an existing duty was to be considered, thereafter, in the same light as a concession granted, as far as industry relief was concerned.

The deletion of the phrase--"as a result of unforeseen developments"--was merely intended to remove an unnecessary element of the clause. The Tariff Commission had long ignored the phrase[14] but some of the industry representatives professed concern as to whether they were protected by the clause if it could be shown that someone in the

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[14]U.S. Congress, Senate, Committee on Finance, Extending Authority to Negotiate Trade Agreements, Hearings, 80th Cong., 2d sess., on H.R. 6566, (Washington, 1948), p. 128.

State Department or one of the negotiators had been aware that injury was likely to befall the particular industry after the concession was granted.[15] If this point could be established, they contended, the injury was not unforeseen and the clause would not cover the situation.

The language of the "escape clause" has always been open to serious differences of interpretation and even the changes accomplished by the 1951 Act did little to solve the fundamental problems created by the wording of the clause. The remainder of this chapter will be devoted to an analysis of the clause, itself; in particular a discussion of the key words and phrases which have been responsible for most of the controversy surrounding "escape clause" administration. The manner in which the Tariff Commission and the President have interpreted and applied the clause in practice will be reserved to Chapter IV.

First, we shall clarify the reason for including the "binding" of any duty as a possible cause of injury. If there has been no reduction in the tariff, i.e., no concession granted to another country, it is reasonable to ask why an industry should be granted relief from increased imports. The argument for permitting an "escape" under such conditions is based on the contention that once an exporter in a foreign country is assured, through a binding, that a duty will not be raised, he may expand his production and marketing activity in order to compete more readily in the American market. Thus, he may gain economies of scale, establish consumer preference in America through

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[15] U.S. Congress, Senate, Committee on Finance, Trade Agreements Extension Act of 1951, Hearings, 82d Cong., 1st sess., on H.R. 1612, (Washington, 1951), Part 2, p. 1345.

advertising, or establish a marketing outlet that will enable him to take over a sufficient amount of the market to injure domestic producers of competitive products. All of this, of course, is presumed to result from the assurance that a duty will not be raised, i.e., the binding.

Another element of the clause is the condition that the increasing imports of the product must be caused by the concession--at least in part--granted in a trade agreement. This means that if an increase in imports, following a tariff reduction or binding, has contributed in some manner, however slight, to an industry's plight, then that is sufficient to qualify the industry for relief under the "escape clause"; provided the other criteria of the "escape" provision have been met. There is always the problem, associated with an "escape clause" investigation, of determining how much of an industry's difficulty is due to increasing competition from other domestic producers, from changing consumer demand, substitutes, price changes, etc.; all of which may be ignored under this phrase if imports have increased following a reduction in tariffs.

A third recent addition to the "escape clause" is the phrase permitting a "relative" increase in imports--relative to domestic production of a product--to be considered as evidence of serious injury to domestic producers. Although the Tariff Commission had interpreted the older form of the "escape" provision to cover this point,[16] a strict interpretation of the old clause would have recognized only an

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[16] U.S. Congress, Senate, Committee on Finance, Extending Authority to Negotiate Trade Agreements, Hearings, 80th Cong., 2d sess., on H.R. 6566, (Washington, 1948), p. 128.

actual increase in imports, over some base period, as evidence of serious injury to a domestic producer. But even in the case of an absolute increase, there remains the problem of selecting a representative base year for computing the amount of increase in imports.

The problem is further complicated by the fact that imports may be increasing, both absolutely and relatively, as compared to domestic production, and yet the United States producers may be prospering as never before. This may happen in periods of a sellers' market for the product in question or when domestic producers, though producing at full capacity, fail to satisfy all the demand at current prices. Changes in the ratio of imports to domestic production, as an indication of a relative increase in imports, may not give as accurate a picture of an industry's position as might be expected. If the ratio of imports to domestic production is low, a large increase in the ratio may not indicate serious injury to domestic producers. But if imports are already usurping a large part of the domestic market, a slight increase in the ratio may indicate that imports have taken over enough more of the domestic producers' market to cause serious injury.

The opposite problem is possible, too. Imports might not have increased absolutely and yet an American industry might have lost part of its market, thus suffering injury from imports. This is, of course, possible in a situation of declining demand. Imports may actually decrease quantitatively, yet command a larger share of a diminishing domestic market, thus leaving the domestic producers in an even worse position than if imports had increased quantitatively in a stable market.

Finally, an industry may be entitled to relief even though imports of competitive products have increased neither absolutely nor relatively. In a depression it is possible that the domestic producer might need the entire domestic market to survive the lean years if prices decline rapidly or costs decline more slowly than prices. Even the same percent, or a larger percent for that matter, of the smaller market would not keep the industry in a profitable position.

The phrase--"cause or threaten serious injury"--presents other problems of interpretation; the most important factor being the determination of just what constitutes "serious" injury. It is unlikely that any two people would arrive at the same decision in assessing the degree of injury a domestic industry must suffer before its position is termed "serious". Within each industry there are all types of firms--some huge corporations, some small independents, some inefficient, some more efficient--and a level of imports that may ruin one producer may be hardly noticeable to another. For example, one group of producers, located near a seaport where competitive imports--because of cheap water transportation--are surging into the market, may be seriously affected while other producers in the same industry may be located inland far enough that imports, because of transportation costs, cannot compete in their market. Thus, the more favorably located firms escape import competition. Under such circumstances, how is one to lump the two groups together to determine whether the industry, as a whole, should be protected from the increasing imports?

Nor is the task of determining "threatened" injury any simpler. How is one to forecast whether domestic producers will adapt to the increased competition or whether the imports can be expected to

increase or decrease in the future? This determination involves a study of the plans of exporters, factors influencing the supply of exports, the ability of the domestic producers to adjust to the situation, and a survey of the future domestic demand for the product.

Another problem in applying the clause is the determination of what constitutes the "domestic industry producing like or directly competitive products". This phrase entails several notoriously difficult problems. In deciding which firms to include in the study of industry conditions, the biggest problem involves those firms which produce a variety of products, i.e., multi-product concerns. Is the producer of toothpicks, wagon tongues, and barrel staves a member of all three industries? And if such a producer is selling two of these products at a good profit but imports are cutting into the market for the third, should he be considered as eligible for relief under the "escape clause" as a producer in that industry?

Defining the domestic industry concerned involves, of course, a decision as to what constitutes "like or directly competitive" products. It is not always easy to determine the extent to which American consumers will substitute imports for a domestic product. Price differentials between the import and the domestic item, as well as style and use preferences, are among the factors to be considered in this connection. Constantly changing consumer tastes and habits render it impossible to determine whether products which are competitive today will be equally competitive in the market of tomorrow.

Other questions of similar nature will be more conveniently dealt with in connection with the interpretation of the Tariff Commission in Chapter V.

Chapter IV

ESCAPE CLAUSE ADMINISTRATIVE PROCEDURE

We shall now turn to an examination of the procedures followed by the Tariff Commission and the President in the administration of the "escape clause". First, let us follow the administrative routine of processing applications for relief under the "escape" provision.

This procedure was first formalized on February 25, 1947, by Executive Order 9832, the same document which provided for the mandatory inclusion of the clause in all subsequent trade agreements.[1] This order named the Tariff Commission as the administering agency for "escape clause" procedure and directed the Commission to investigate applications for relief under the "escape" provision to the extent necessary to determine whether the industry involved should be granted relief from increased imports. If the Commission, following the investigation, concluded that the industry seeking relief was actually being seriously injured by imports resulting from a tariff concession, it was required to inform the President of the remedial action--modification or withdrawal of the tariff concession--necessary to correct the situation.

As a result of this order and in response to the demands of industry for some indication of the factors the Tariff Commission would consider in an "escape clause" investigation, the House Committee on Ways and Means in a resolution of July 25, 1947, directed the

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[1] 3CFR, 1947 Supp., p. 127.

Commission to:

> establish--the substantive and procedural criteria, measurements, or other standards by which it will determine whether imports, of any particular commodity, are entering in such quantities as to 'injure' or threaten 'injury' to any domestic unit of agriculture, labor, industry or segment thereof, and to inform the Committee on Ways and Means as to how that Commission intends to comply with the provisions of Executive Order 9832....[2]

On February 24, 1948, the requested report--"Procedure and Criteria with Respect to the Administration of the 'Escape Clause' in Trade Agreements"[3]--was issued by the Tariff Commission and has formed the nucleus for all subsequent "escape clause" activity.

While much of the original procedure set out in the 1948 report is still applicable, Section 7 of the 1951 Trade Agreements Extension Act[4] not only changes the procedure to comply with recent changes in the language of the "escape clause" but also gives the framework of the procedure a statutory status. In accord with the 1951 Act, the Tariff Commission has published its own "Rules of Practice and Procedure" (Part 207) which supplements the provisions of the 1951 Act with detailed instructions to applicants.[5] Finally, the 1953 Trade Agreements Extension Act has also added to the "escape clause" procedure.[6]

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[2] U.S. Congress, Senate, Committee on Finance, Extending Authority to Negotiate Trade Agreements, Hearings, 80th Cong., 2d sess. on H.R. 6566, (Washington, 1948), p. 125.

[3] Ibid.

[4] Public Law 50, Trade Agreements Extension Act of 1951, (82d Cong., 1st sess.), 1951, Sec. 7. See Appendix "F".

[5] See Appendix "K".

[6] Public Law 215, Trade Agreements Extension Act of 1953, (83d Cong., 1st sess.), 1953, Title I, Sec. 102.

The first step in outlining the "escape clause" procedure concerns the applications for relief. Under the law,[7] the Commission must begin an investigation: (1) Upon the application of any interested party--usually an association representing the producers of the industry; (2) If the President requests an investigation of a particular industry; (3) If the Commission, itself, decides there is some reason for looking into the plight of an industry, or--and this is a change from the 1948 procedure--(4) If either the House Committee on Ways and Means or the Senate Finance Committee requests that an industry be investigated for the purpose of determining whether it is eligible for relief under the "escape clause".

Under the present procedure, an industry which has filed an application for "escape clause" relief and has been denied a tariff increase may immediately file another application. There is no limit to the number of times the domestic producers may request an investigation--several have already availed themselves of this privilege three times.

Upon receipt of a properly filed application, public notice of the event is given by posting a copy of the notice at the Tariff Commission's offices in Washington and New York City and by publishing it in the "Federal Register" and in "Treasury Decisions". Copies are also mailed to all persons or organizations who, it is expected, might be interested in the investigation.

The next main procedural step is the investigation of the applicant's claim that he is being injured by increasing imports. Under the

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[7] The following discussion, unless otherwise noted, refers to current procedure (1953).

1948 procedure a "preliminary inquiry" was initiated by the Tariff Commission, upon receipt of the application, to determine whether, on the basis of the information supplied by the applicant and other readily available data, there was enough evidence of injury to warrant a formal investigation. The decision as to whether to pursue the investigation rested on a vote of the Commissioners--an evenly divided vote being interpreted as sufficient reason for dismissing the case. If the case was dismissed, the Commission was required only to issue a statement of the reasons for the action--a report, under the 1948 law, need not be published except when a full investigation was held. Nor was there any time limit established, under the earlier procedure, to hasten Commission decisions on whether to investigate the case or whether to recommend relief.[8]

Under Sec. 7 (a) of the 1951 Act this "preliminary inquiry" is replaced by a new procedure. Now an investigation is instituted very shortly (usually within two weeks) after an application is filed with the Tariff Commission. The Commission must still decide, by vote--after looking over immediately available data--whether to hold public hearings and, under the 1953 Act, an evenly divided vote of the Commissioners must be interpreted as an affirmative vote. If the Commission decides not to hold public hearings and does not conduct a full investigation, it must publish a report of the information gathered in

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[8] For example: Six months elapsed between the date the clothespin industry filed its first application and the date on which the Tariff Commission began the formal investigation. And in the hatters' fur case, the application was filed June 22, 1950, yet the modification of the tariff concession was not proclaimed until January 5, 1952.

the case, along with its decision, and the case is dismissed. It is possible, however, under the 1951 Act, for either of the Congressional Committees to direct that public hearings be held even after the Commission votes against it.

In the event the Tariff Commission finds that there is evidence that the applicant industry is being adversely affected by increasing imports, it must conduct a thorough investigation of the situation and hold public hearings. Public notice of the time and place for the public hearings is given in the same manner as the public notice of the filing of an application for relief. Ordinarily, public notice is given at least thirty days in advance of the hearings in order to give anyone interested an opportunity to prepare evidence to present at the hearings.

During the investigation, the Commission--according to Sec. 7 (b) of the 1951 Act--must consider, among other things, facts pertaining to the following:

> ...a downward trend of production, employment, prices, profits or wages, or a decline in sales, an increase in imports, either actual or relative to domestic production, a higher or growing inventory, or a decline in the proportion of the domestic market supplied by domestic producers.

To accomplish this, the Commission may supplement the information submitted by the applicant and introduced at the hearings with data from questionnaires sent to producers of the commodity. Occasionally, Tariff Commission investigators are sent out to investigate the particular industries first hand. Normally, however, much of the pertinent data is available from other government agencies.[9] Regardless of the

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[9]U.S. Bureau of Labor Statistics, U.S. Department of Commerce, etc.

form of the investigation, the Commission must complete the investigation and make its report within nine months after the date the application for relief was filed.[10]

After having considered all the information available, the Commission must then decide--by vote--whether to recommend that the "escape clause" be invoked. If the Commissioners, by a majority vote, decide that the evidence secured during the investigation does not support the contention that imports are causing or threatening serious injury to the domestic producers, it authorizes publication of a report on the investigation, including its decision, and the case is dismissed.

But if, by a majority vote, the Commissioners feel that the industry is entitled to relief under the "escape" provision, the report on the investigation--along with the Commission's decision and the recommendations as to the steps necessary to protect the industry from further injury--is submitted to the President for his consideration. Moreover, under the 1953 Act, if the Commissioners voting are evenly split on the question of whether to recommend relief for the applicant, the President may take the decision and recommendations of either group to be the decision of the Commission.[11] In its recommendations to the President, the Commission may advise: increasing the tariff on certain classifications of the commodity, withdrawal of the entire concession, or that

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[10] Public Law 215, Trade Agreements Extension Act of 1953, (83d Cong., 1st sess.), 1953, Title I, Sec. 102.

[11] Following the investigation of the hand-blown glassware industry the Commission split 3-3. The subsequent report sent to the President could have been interpreted by him either as an affirmative or as a negative recommendation. See U.S. Tariff Commission, 37th Annual Report, p. 54.

import quotas be used to limit the imports to the quantity desired. Within sixty days after the Commission makes its report to the President, or sooner if the President accepts the recommendations, it must also send a report of the findings and recommendations to the Congressional Committees.[12]

We may now turn to the part played by the President of the United States in the "escape clause" procedure. After the Tariff Commission's report with its recommendations is submitted to the President, he has three alternatives. He may accept the Commission's advice and, by proclamation, withdraw or modify the concession or establish import quotas; he may reject the recommendations of the Commission; or he may return the report to the Commission for further study. If the President does not take the recommended action within sixty days after the Commission's report is submitted to him, he must send a report to the Congressional Committees explaining his reasons for not granting the recommended relief.

But if the President does proclaim the modification or withdrawal of the concession, another phase of "escape clause" procedure comes into play. Under the provisions of Sec. 7 (a) of the 1951 Act, "escape clause" actions are to remain in effect only "for the time necessary to prevent or remedy" the injury to domestic producers. The President, to establish a procedure in accordance with this law, issued Executive

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[12] In this paper, the term--Congressional Committees--will be used to refer to the Committee on Finance of the Senate and the Ways and Means Committee of the House of Representatives. These two committees are responsible for formulating the legislation regarding the trade agreements program.

Order 10401[13] in which he directed the Tariff Commission to observe developments pertaining to the products on which the "escapes" had been taken and to report on these developments periodically. The first report is to be made in each case not later than two years after the "escape" has been taken, and subsequent reports are to be made at one-year intervals as long as the "escape" remains in effect.

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[13] 3CFR, 1952 Supp., p. 105

Chapter V

DISPOSITION OF ESCAPE CLAUSE APPLICATIONS

The purpose of this chapter is to present an analysis of the disposition of applications for relief under the "escape clause". In this connection, we shall have occasion to see how the Tariff Commission has interpreted--in many cases--the main elements of the "escape" provision. We shall also be able to indicate the factors the Tariff Commission has considered of primary importance in deciding whether to recommend that a domestic industry be granted relief. Following this survey of "escape clause" activity, we may note the importance of the divergence of opinion within the Commission, itself, as to the proper interpretation of the "escape" provision. And, finally, we shall point out the impact of our defense and foreign economic policy--through the Presidents' decisions--on the final disposition of "escape clause" applications.

Before beginning our analysis it should be helpful to summarize, in tabular form, the results of "escape clause" activity since April, 1948.[1] (See Table I.)

After a glance at these statistics, it seems that the important question to be answered is: What accounts for the discrepancy between the number of applications filed (58) and the number of industries (5) granted relief? The table indicates that nearly half of these cases are still pending, or have been withdrawn or dismissed after preliminary

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[1] Applications filed through April 9, 1954; final disposition of cases through August 20, 1954. See Appendix "L".

inquiry. It is the remainder of the cases--those which have been completed and on which adequate information is available--that will comprise the basis for this analysis.

Table I

ESCAPE CLAUSE ACTIVITY, APRIL, 1948 to APRIL, 1954

"Escapes" invoked by Presidential proclamation	5
Tariff Commission recommendations rejected by the President	6
Tariff Commission's report returned for further study by the President	2
Modification in tariff recommended by the Tariff Commission	13
No modification in tariff recommended by the Tariff Commission	19
Applications on which investigations have been completed	32
Applications dismissed after preliminary investigation	16
Applications completely processed	48
Applications withdrawn	3
Applications pending	7
Total number of applications filed	58

Source: U.S. T.C. publication (TC 27900)

In the following discussion we may also look for the answers to a number of more specific questions such as: How clearly have the applicants established their eligibility for relief under the "escape clause"? Has the Tariff Commission been consistent in its interpretation of the provision and impartial in its investigations and recommendations? Is there such a conflict between our foreign economic policy and "escape clause" procedure that the administration feels that the device should not be allowed to operate? We hope to shed some light on these and other points as we proceed with the analysis.

The criteria which are to be met before "escape clause" relief may be granted were discussed in detail in Chapter III, but they are summarized below, for we shall follow an outline of these points in the subsequent discussion. They are as follows:

1. That there has been an increase in imports either actual or relative to domestic production of the commodity concerned.
2. That the increase has been at least partly the result of a previous tariff concession.
3. That the imported product and the domestic item made by the applicant industry are like or directly competitive.
4. That there is a domestic industry involved.
5. That the import is entering under such conditions as to cause serious injury to the domestic industry producing the competitive product.
6. Or that the import is entering under such conditions as to threaten serious injury to the domestic industry producing the competitive product.

Have Imports Increased?

In determining whether there has been an increase in imports there always arises the problem of setting the historical base period from which the increase can be computed. The Tariff Commission, because of the abnormal war and post-war years, usually looks for some pre-war representative level of imports with which to compare the present level of imports.[2] With the tremendous increase in national income in the

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[2]U.S. Congress, Senate, Committee on Finance, Trade Agreements Extension Act of 1951, Hearings, 82d Cong., 1st sess., on H.R. 1612, (Washington, 1951), Part 2, p. 1324.

United States during the past decade, it is indeed unusual to find a case in which imports have not increased over pre-war levels. In this analysis we are primarily interested in the circumstances surrounding the increase in imports, not in the amount of the increase.

In some cases, it has been pointed out that the domestic industry--although expanding production of a commodity--has failed to keep pace with the growth in imports of the product. The Tariff Commission generally has not considered such a situation as warranting additional tariff protection because the firms involved could show little evidence of damage to their profits, employment, or investment--in most cases the applicants were doing more business than ever before in spite of increased imports. The motorcycle,[3] groundfish fillet (1952),[4] and bicycle[5] applications were turned down primarily because they fell into this category. However, the Commission interpreted a similar situation in the watch industry (1952)[6] as sufficient reason for recommending that the producers be granted relief from threatened injury. In the watch case, it is not clear just what the Commission based its conclusions on; but the President, in his letter rejecting the Commission's advice, concluded that the recommendation must have come from the

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[3]U.S. Tariff Commission, Motorcycles and Parts, Report on the Escape-Clause Investigation, (Washington, 1953), p. 4.

[4]U.S. Tariff Commission, Groundfish Fillets, Report on the Escape-Clause Investigation, (Washington, 1953), p. 7.

[5]U.S. Tariff Commission, Bicycles and Parts, Report on the Escape-Clause Investigation, (Washington, 1953), pp. 6, 12.

[6]U.S. Tariff Commission, Watches, Watch Movements, Watch Parts, and Watchcases, Report to the President on the Escape-Clause Investigation, With the President's Statement on the Commission's Recommendations, (Washington, 1953), p. 14.

significance which the Commission attached to the fact that the expansion of the domestic jeweled watch production had not kept pace with the expansion of imports of the commodity.[7]

But when the applicant industry has faced a situation in which imports were increasing while the consumption of the domestically produced item was decreasing, the Tariff Commission has generally taken a sympathetic view. In the investigation of the screen-printed silk scarf industry,[8] for example, the Commission found that the domestic production of screen-printed silk scarves was declining even though the domestic consumption of the product had increased greatly. Imports were filling the widening gap between domestic production and domestic consumption, and the Commission recommended that American producers be granted relief from the imports. Nevertheless, the President returned the report of the investigation to the Commission and requested additional information on the case.

Increasing imports in the face of declining trends in domestic production and consumption seem to have been an important point in the women's fur felt hat[9] and hatters' fur[10] cases. Here, again, the

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[7] Ibid., p. 78.

[8] U.S. Tariff Commission, Screen-Printed Silk Scarves, Report to the President on Investigation No. 19 Under Section 7 of the Trade Agreements Extention Act of 1951, (Washington, 1953), p. 10.

[9] U.S. Tariff Commission, Women's Fur Felt Hats and Hat Bodies, Report to the President on the Escape Clause Investigation, With Appendix--Proclamation by the President, (Washington, 1951), p. 19.

[10] U.S. Tariff Commission, Hatters' Fur, Report to the President on the Escape Clause Investigation, With Appendix--Proclamation by the President, (Washington, 1952), pp. 2,3.

Commission recommended relief although this factor, in itself, may not have been the deciding element in these cases.[11]

Another interpretation with respect to this point is of interest. In the household china tableware investigation,[12] the Commission asserted that the declining share of the market supplied by the domestic industry since 1949--after a post-war peak of production--was not, in itself, a valid reason for granting escape clause relief to the industry. The domestic producers, the Commission report stated, had no right to expect they could continue to supply almost the whole of the United States market as they had done during and immediately after the war when imports of china tableware were not available.

In this section we may also point out the Commission's interpretations in the cotton-carding machinery[13] and blue-mold cheese[14] cases. After the investigation of the cotton-carding machinery industry, relief was denied by the Tariff Commission because there were no longer any imports of the cotton cards. The absence of imports since August, 1952 was thought to indicate that the increase in imports during 1951 and the first part of 1952 was due to a temporary, war-induced situation.

In the blue-mold cheese case, import limitations had been established under Section 104 of the Defense Production Act of 1950 after

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[11] See page 49.

[12] U.S. Tariff Commission, Household China Tableware, Report on the Escape Clause Investigation, (Washington, 1953), p. 6.

[13] U.S. Tariff Commission, Cotton Carding Machinery and Parts Thereof, Report on Escape Clause Investigation No. 18 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), pp. 11, 16.

[14] U.S. Tariff Commission, Blue-Mold Cheese, Report on the Escape-Clause Investigation, (Washington, 1953), pp. 3, 4.

the application for relief had been filed. In view of this development, the Commission concluded that the competitive product was not being imported in amounts sufficient to cause serious injury. The Commissioners noted, however, that if Section 104 were repealed, it might be necessary to assist the industry through "escape clause" action.

Were the Import Increases the Result of Previous Tariff Concessions?

Next we shall consider the Commission's interpretation and conclusions regarding the phrase in the "escape clause" which prescribes that the increasing imports must have been at least partly the result of a previous tariff concession. Usually an increase in imports will be partly caused by other factors, but, unless there is specific evidence to the contrary, the Commission infers that--if imports have increased following a duty decrease--the concession is responsible.[15] According to the Commission's interpretation, the concession need not even have been the chief cause of the import increase. This interpretation, however, permits the questionable practice of granting relief, under the "escape clause", to industries whose primary troubles are due to changing consumer demand or to other domestic factors. The Commission, also, has long supported the contention that a binding of a tariff rate might cause foreign producers to increase their efforts to develop production and marketing facilities and thus increase their exports to the United

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[15] U.S. Congress, Senate, Committee on Finance, Trade Agreements Extension Act of 1951, Hearings, 82d Cong., 1st sess., on H.R. 1612, (Washington, 1951), Part 2, p. 1325.

States in quantities sufficient to cause serious injury to our domestic producers.[16]

Here, again, we find that several different situations have arisen, i.e.: (1) an increase in imports not attributable to the concession, (2) an increase primarily attributable to the concession, and (3) an increase partly attributable to the concession but where domestic factors dominate the picture.

The Tariff Commission held that the increase in imports of iron or steel wood screws was primarily due to the inability of domestic producers to supply domestic consumption needs for the product.[17] This, in turn, was attributable to the inability of the domestic industry to obtain enough steel to produce the necessary quantity of screws. Relief for the wood screw producers was, therefore, denied. Nor did the Commission attribute an increase in mustard seed imports to the tariff concession.[18] The report of the investigation points out that the Montana mustard growers--because they switched from mustard seed to price-supported wheat production--were no longer growing enough mustard to supply their previous share of the domestic market. Imports could certainly be expected to increase under such conditions.

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[16]U.S. Congress, Senate, Committee on Finance, Extending Authority to Negotiate Trade Agreements, Hearings, 80th Cong., 2d sess., on H.R. 6566, (Washington, 1948), p. 128.

[17]U.S. Tariff Commission, Wood Screws of Iron or Steel, Report on the Escape-Clause Investigations, December, 1951 and March, 1953, (Washington, 1953), p. 2.

[18]U.S. Tariff Commission, Mustard Seeds (Whole), Report on Escape-Clause Investigation No. 23 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), p. 25.

Though the two decisions above seem to be reasonable enough, let us see whether the Tariff Commission followed the same logic in the women's fur felt hat case.[19] Here, the increase in imports of women's hat bodies occurred primarily because of a style change from the domestic product (plain felt) to the traditionally imported types of hat bodies (velour and suede). Because the domestic industry produced very little of these napped types, imports of the preferred style increased rapidly. Thus, it seems that the domestic industry simply missed the boat on a shift in consumer preference and was unable to handle the demand for the different style hat body. The decision to grant relief, if it were based on this point, would appear inconsistent with the Tariff Commission's reasoning in the mustard and wood screw cases. As we shall see, additional factors may have been responsible for the different decisions in these cases.

The Commission report on lead and zinc (1954)[20] also gives us an indication of the Commission's interpretation on this point. The report states that import duties have restricted the flow of imports into the United States "only to a minor extent" since the beginning of World War II. It has been the increase in import values--following an acute shortage of supply over much of this period--which reduced the ad valorem equivalent of the specific tariff rates and caused the increase in imports. Furthermore, 43 percent of the imports of

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[19] U.S. Tariff Commission, Women's Fur Felt Hats and Hat Bodies, Report to the President on the Escape Clause Investigation, With Appendix--Proclamation by the President, (Washington, 1951), p. 3.

[20] U.S. Tariff Commission, Lead and Zinc, Report to the President on Escape-Clause Investigation No. 27 Under the Provisions of Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1954), pp. 8, 11.

unmanufactured lead and 32 percent of the imports of unmanufactured zinc has entered duty free during and since World War II. In view of these facts, it necessitates a very liberal interpretation of the "escape clause" to find that the imports increased "as a result of the tariff concession".

In all cases in which the Tariff Commission recommended relief, it held that the increase in imports was attributable to the concession. In other cases, the Commissioners denied increased tariff protection even though they recognized that imports had increased as a result of a tariff concession. In such cases other factors were no doubt considered of greater importance in shaping the final decision. In the chalk whiting investigation,[21] for example, the Commission did not deny that imports were entering as a result of a tariff concession; but a more important point, in the opinion of the Commission, was that the primary reason for the industry's woes lay in the fact that preferable domestic products had taken over the market formerly held by chalk whiting. Whiting made from limestone, either by grinding or by chemical processing, can be produced in many sections of the country--thus minimizing transportation costs from producer to consumer. Domestic chalk whiting is made from imported crude chalk and transportation costs are considerable from the grinding plant near the seacoast to inland markets.

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[21] U.S. Tariff Commission, Chalk Whiting, Report on Escape-Clause Investigation No. 15 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), pp. 12-15.

Similar reasoning lay behind the Commission's decision to deny relief to the domestic pregnant mares' urine producers.[22] New and preferable synthetic non-steroid and coal-tar estrogens have replaced the estrogens derived from pregnant mares' urine, and it was this development, not increasing imports of PMU or estrogens made from it, that was responsible for the decline in the domestic industry according to the Commission's view.

Was the Imported Item Like or Directly Competitive with the Domestic Product?

The criterion that the domestic and imported products must be like or directly competitive has been an important factor in several cases. In determining whether domestic commodities are "like or directly competitive" with the imports, the Commission usually inquires whether the two products are good substitutes for one another and whether they are bought by the same consuming groups. If the imports and the domestic items are not used by the same group of consumers, the reason may lie in price, use, or other differences between the products.

The Commission's decision to refuse aid to the domestic rosary industry[23] was based primarily on the fact that the import increase had taken place in the inexpensive types of rosaries--the types traditionally supplied almost wholly by imports. The domestically manufactured rosary is more expensive and of better quality than the foreign-made

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[22] U.S. Tariff Commission, Pregnant Mares' Urine and Estrogens Obtained Therefrom, Report on Escape-Clause Investigation No. 14 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), pp. 8,9.

[23] U.S. Tariff Commission, Rosaries, Report on Escape-Clause Investigation No. 20 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), pp. 4, 16.

rosary, so the Commission felt that the imports were not competitive with the domestic product. And in the tuna-bonito investigation,[24] the Commission contended that bonito canned in oil is not competitive with tuna canned in oil because of differences in taste, price, and physical characteristics.

Differences between the import and the domestic product in price, quality, and type of outlet were found by the Commission during the investigation of the metal watch bracelet industry's application for relief from imports.[25] The Commission noted that the domestic product was of better quality and sold for a higher price in jewelry or department stores or attached to better watches; whereas the imported product was generally of poor quality and was sold through variety stores or drug stores at from 50¢ to $1.50. For this reason the Commission held that the imports were not competitive with the domestic product--a fact admitted by some of the domestic producers, themselves.

The Commission also held, in the report of the mustard seed investigation, that the Montana-produced yellow mustard seed was not directly competitive with imported European yellow mustard seed because the imported product was regarded by many users as "bolder" and better filled, therefore bringing a premium price in the market.[26]

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[24]U.S. Tariff Commission, Bonito Canned in Oil, and Tuna and Bonito, Canned, Not in Oil, Report on the Escape-Clause Investigation, (Washington, 1953), p. 4.

[25]U.S. Tariff Commission, Metal Watch Bracelets and Parts Thereof, Report on Escape-Clause Investigation No. 21 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), p. 9.

[26]U.S. Tariff Commission, Mustard Seeds (whole), Report on Escape-Clause Investigation No. 23 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), p. 10.

Was There a Domestic Industry Involved?

The term--"domestic industry"--has also found a definite interpretation by the Tariff Commission. In considering the glace cherry producers' application for relief under the "escape clause", the Commission found that the product was not the sole output of any producer and that the output of glace cherries accounts for a very small proportion of the total production of firms making the commodity.[27] For this reason, the Commission denied that the glace cherry business comprised a separate United States industry and was not, therefore, eligible for relief under the "escape" provision.

In the chalk whiting industry investigation we find another interesting interpretation as to what constitutes a domestic industry.[28] The Commission (the majority opinion) concluded that the domestic industry which they should consider included not only the one domestic producer of chalk whiting (the applicant in the case) but also the entire domestic industry producing items like or directly competitive with chalk whiting. In other words, they included in the investigation all the producers of limestone whiting and precipitated calcium carbonate. With such an interpretation, they could easily find that the volume of imports of chalk whiting was of little significance to the overall domestic industry making calcium carbonate pigments. If the majority of the Commission had taken the position that the domestic

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[27] U.S. Tariff Commission, Glace Cherries, Report on the Escape-Clause Investigation, (Washington, 1953), pp. 5, 6.

[28] U.S. Tariff Commission, Chalk Whiting, Report on Escape-Clause Investigation No. 15 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), pp. 11, 12.

chalk whiting producer constituted a distinct industry, then the increase in imports would, no doubt, have been considered more serious.

On the other hand, the Commission has considered garlic and alsike clover seed production as full fledged industries. Both of these products are grown as minor crops in rotation with several other crops on the same ground with the same labor and with much of the same equipment. The distinction between these industries and the glace cherry industry, on this point, appears to be minute.

Has There Been Serious Injury to the Domestic Industry?

The big question involved in any "escape clause" investigation is whether the increased imports are entering under such conditions as to cause "serious injury" to the domestic industry involved. What constitutes serious injury is strictly a matter of opinion and cannot be resolved into any kind of universal yardstick. Obviously, almost any import usurps part of the market for some domestic product, i.e, if people could not get the import, they would probably buy something else; but the problem is to decide on the degree of injury that must be present before relief for the domestic industry will be recommended.

It is probable that a large industry can survive more serious import competition for a longer time than can a smaller one, and a huge corporation has an excellent chance of adjusting to meet the situation by diversifying its production in the direction of non-import-competitive items. The particular type of industry involved is also likely to have some influence on the decision of the Tariff Commission. There are indications that a defense industry, like the jeweled watch

manufacturers, would be granted relief from less serious injury than would the producers of a less vital product.[29]

In general, the Tariff Commission has considered the employment, profit, and production status of the producers of the commodity as being a dominant factor in deciding whether to recommend relief after an investigation. But the Commission is not interested solely in the profit attributable to the manufacture or sale of a particular product if it is made by a multi-product firm. It is the overall operations of the major producers of the commodity which are important.

For example, in denying relief to the domestic producers of clothespins, the Commission recognized that clothespins were only one of several products made by most of the producers. Furthermore, the Commission held that where these companies lost money making clothespins, they made up for it on the rest of their operations.[30] The final decision in such cases apparently rests on the answer to this question: Do the overall operations of the producers contribute to a reasonably profitable situation? This, of course, involves a consideration of the various firms which make the product. Few of the major producers of the commodities involved in "escape clause" investigations make only the one product. But a good many of the minor producers of a number of the products are one-product concerns. The Commission, therefore, must look at the producing elements as an aggregate--how important is the

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[29]U.S. Tariff Commission, Watches, Movements, and Parts (1954), Report to the President on Escape-Clause Investigation No. 26 Under the Provisions of Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1954), pp. 19,20.

[30]U.S. Tariff Commission, Spring Clothespins (1952), Report on the Escape-Clause Investigation, (Washington, 1953), pp. 7, 8.

product to the segment producing most of the domestic output? In such cases as the glace cherry industry, there is no question but that imports could take over the entire United States market with very little damage or "serious injury" to the several producers.[31] And, as we should expect, the Commission concluded that relief was not warranted.

But now consider the garlic case in which the Commission did recommend relief.[32] The domestic production of garlic is concentrated in California and in a very small area of that state. In fact, garlic growing is merely an incidental part of the vegetable and sugar beet industries. To illustrate this point, we may point out that the four largest garlic growers, who produce about 40 percent of the total United States production, get 90 percent of their income from the sale of other products. It is difficult to justify the Commission's recommendation that the garlic growers should be aided by import quotas on garlic.

We may take issue here with Mr. Kravis' statement that "the Commission has recommended the invocation of the 'escape clause' only when an increase in imports has been responsible to a significant degree for the deterioration in sales and profits of a domestic industry."[33] Certainly, if a handful of the major producers of a product get 90 percent of their income from other sources, it is doubtful whether the imports

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[31] See Table II, Chapter VI.

[32] U.S. Tariff Commission, Garlic, Report to the President on the Escape-Clause Investigation, With the President's Statement on the Commission's Recommendations, (Washington, 1953), pp. 26, 27.

[33] Irving B. Kravis, "The Trade Agreements Escape Clause," The American Economic Review, XLIV (June, 1954), 319.

could affect their profit or sales to a degree of "significance" warranting "escape clause" relief.

A similar instance in which the Tariff Commission recommended relief is found in the report on the investigation of the alsike clover seed industry.[34] The Commission concluded that the producers of this product, who seem to have been hurt most by a price decline after losing their price support program under the Commodity Credit Corporation, were in dire need of relief from imports. The facts do not seem to support the contention that these producers were without recourse to alternative sources of income. A summary of the facts should clarify this point. In 1949, in the principal producing states, there were only 427 farms in Oregon, 449 farms in Idaho, 946 farms in Minnesota, and 75 farms in California producing alsike clover seed. On these farms the average acreage devoted to this crop was 23.5, 33.0, 11.7, and 28.4 acres, respectively--the growers being highly concentrated in a very few counties.

Now, let us see how important the alsike clover crop is to these farmers. Even if we look at the data from only the four counties which produce the most alsike in their respective states, we can see that the situation is not as hopeless as the Tariff Commission contended. A representative sample of growers in each state would, no doubt, have shown an even more favorable picture. Small grains accounted for a larger part of total farm sales for the growers in all four states than

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[34] U.S. Tariff Commission, Alsike Clover Seed, Report to the President on Escape-Clause Investigation No. 31 Under the Provisions of Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1954), pp. 6-14.

did alsike clover seed. In Klamath County, Oregon, and in Modoc County, California, potatoes were also a more important source of income for the clover growers. In Idaho County, Idaho, where income from small grains was more than three times as great as sales of alsike, livestock raising was also twice as important a source of income as alsike. And in Roseau County, Minnesota, where small grains yielded nearly six times more income than alsike clover seed, livestock and dairying were also much more important sources of income.[35]

An important factor, nevertheless, from the Tariff Commission's viewpoint seems to be the economic condition of the producers as a group. If the industry being considered has suffered a considerable loss in profit and business, the Commission has usually recommended that import barriers be raised. Furthermore, and this is the questionable element, the Commission has recommended relief in such situations with little regard as to what actually lay behind the industry's plight.

A good illustration of this point can be found in the Tariff Commission report concerning the women's fur felt hat body industry.[36] The Commission recommended relief for the industry, and a modification of the tariff was proclaimed by the President. The Commission, in its statement of the factors it considered pertinent to the case, admitted that the decline in consumer demand--because of the trend in the United States to "hatlessness"--along with a style change from the domestic

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[35] Ibid., Tables 5 and 6.

[36] U.S. Tariff Commission, Women's Fur Felt Hats and Hat Bodies, Report to the President on the Escape-Clause Investigation, With Appendix--Proclamation by the President, (Washington, 1951), pp. 2-4, 11-20.

plain felt product to the imported napped product--was primarily responsible for the sad state of affairs in the domestic industry. The Commission was also aware that no technical barriers kept the domestic industry from switching to production of the new style hat body. The United States industry, it seems, was simply beaten to the punch. Although there is no doubt that the industry was in poor condition, it seems that the "escape clause" was used in this case, nor primarily to correct injury caused by a tariff concession, but to bolster a domestic industry faced with a waning domestic demand for its product. The facts in the above case indicate that there is reason to doubt the validity of Mr. Kravis' contention that the Commission "has not favored the use of the 'escape clause' to increase the degree of protection and thus to nullify the effect of Trade Agreements in reducing tariff barriers".[37]

A case similar to the one cited above is that of the hatters' fur industry which was also recommended for relief by the Commission--the President later proclaiming a tariff modification.[38] This industry, too, was affected by the declining use of hats in America, along with the change in the different style hats and the increasing use of hats made of textiles. In fact, this industry had experienced difficulties since 1947 and imports at that time were less than 1 percent of total domestic demand. Furthermore, imports were only 5 to 6 percent of

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[37]Irving B. Kravis, "The Trade Agreements Escape Clause", p. 319.

[38]U.S. Tariff Commission, Hatters' Fur, Report to the President on the Escape Clause Investigation, With Appendix--Proclamation by the President, (Washington, 1952), pp. 2-4.

total domestic demand at the time of the investigation. Apparently ignoring the domestic factors, the Commission recommended relief. The brier pipe industry, facing a like situation of declining business and profits, was also recommended for relief by the Tariff Commission,[39] but this time the President refused to go along.[40] The President's statement on the case indicated that he recognized the shift in consumer preference away from pipe smoking.

Difficult as it is to rationalize the Tariff Commissioners' decisions to remedy such conditions by invoking the "escape clause", they have been fairly consistent in recognizing poor business conditions in an applicant industry as evidence of "serious injury" and as a dominant factor when making their final decision.

Was the Domestic Industry Threatened by Increasing Imports?

The "threatened injury" criterion has been the basis for only a few decisions in "escape clause" administration. The conclusion, following the investigation of the scissors and shears industry,[41] was based entirely on the hypothesis that import competition, if the tariff concession were not withdrawn, would increase to the extent that the domestic industry would be seriously injured. The President, however, could not find evidence in the Commission's report to support this

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[39] U.S. Tariff Commission, Tobacco Pipes of Wood, Report to the President on the Investigation Under Section 7 of the Trade Agreements Act of 1951, (Washington, 1952), pp. 8, 14.

[40] The White House, Press Release, Letter to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Committee on Finance, (Washington, 1953), November 10, 1953.

[41] U.S. Tariff Commission, Scissors and Shears, and Manicure and Pedicure Nippers, and Parts Thereof, Report to the President on Investigation No. 24 Under Section 7 of the Trade Agreements Act of 1951, (Washington, 1954), p. 18.

decision and refused to recommend relief. In his statement regarding the rejection he said: "My inquiries with respect to the affected companies indicate that they are not in a depressed condition nor are the employees in the industry suffering, or about to suffer, any reduction in wage rates, earnings, or opportunities for employment."[42]

In the first investigation of the watch industry,[43] the Commission split 3-3 on the question of whether there had been any serious injury accrue to the domestic producers. But, by a majority of 4-2, the Commission found that a threat of serious injury existed and recommended an increase in certain tariffs to avoid this threat.

The Tariff Commission also attached considerable weight to the threat of a higher inventory carryover of unsold figs and the prospect of an impending price decrease when it recommended that the dried fig industry be granted relief from the competition of imported dried figs.[44]

Thus far in our analysis we have not taken account of the fact that it is commonplace to find minority decisions in the Tariff Commission reports which are the reverse of the majority conclusions. This

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[42]The White House, Press Release, Letter from the President to the Chairman of the Senate Committee on Finance and the Chairman of the House Committee on Ways and Means, (Washington, 1954), May 11, 1954.

[43]U.S. Tariff Commission, Watches, Watch Movements, Watch Parts, and Watchcases, Report to the President on the Escape-Clause Investigation, With the President's Statement on the Commission's Recommendations, (Washington, 1953), p. 3.

[44]U.S. Tariff Commission, Figs, Dried, Report to the President (1952) on the Escape-Clause Investigation, With Appendix--Proclamation by the President and Report to the President (1953) on the Investigation Under Executive Order 10401, With Appendix--Letter from the President, (Washington, 1953), p. 19.

indicates the differences of opinion among the Commissioners as to the proper interpretation of facts turned up in the investigation, the duties of the Commission, or of the "escape clause" itself. It is necessary, here, to consider the nature of the main differences in interpretation among the Commissioners, and we shall see whether the split has influenced the results of "escape clause" administration.

The members of the Tariff Commission, though ostensibly bi-partisan and regarded as predominantly protectionist in their views,[45] generally adhere to one or the other of two schools of thought. One group, headed by the Chairman, Edgar B. Brossard, is of the opinion that it is their duty to administer the "escape clause" strictly in accordance with its language.[46] Under this strict interpretation, a domestic industry is entitled to relief whenever an investigation reveals that the criteria of the clause have been met--without regard for the relative importance of the industry to the United States economy or for the possible effect it might have on our foreign trade relations. In other words, this group feels that the sole purpose of the clause is to prevent injury to domestic industry and that it should be used for this purpose whenever needed.

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[45] Klaus Knorr and Gardner Patterson, A Critique of the Randall Commission Report, (Princeton University, 1954), p. 20.

[46] U.S. Tariff Commission, Spring Clothespins (1952), Report on the Escape Clause Investigation, (Washington, 1953), pp. 8-11.

and

U S. Tariff Commission, Chalk Whiting, Report on Escape-Clause Investigation No. 15 Under Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1953), pp. 16-30.

The attitude of the other group is indicated by the remarks of former Vice-Chairman, Lynn B. Edminister, which appeared in the Commission's report on spring clothespins, "...the clause, I think, should be construed in the context of the general policy enunciated in the Trade Agreements Act and pursued by the President in carrying the act into effect."[47] This interpretation would permit consideration--at the Tariff Commission level--of the advisability of granting relief to an individual industry when such action was clearly not in the best interests of our export industries or foreign trade policy.

This basic difference between the two groups of Commissioners accounts for the abundance of dissenting opinions in the Tariff Commission reports of "escape clause" investigations. Without going into specific cases, these dissenting statements--or minority views--were concerned either with emphasizing factors other than those on which the majority conclusion was based, or with pointing out a different conclusion from the same facts--depending on which school of thought the dissenting Commissioner belonged to. There has been a somewhat definite, though not static, grouping of the Commissioners around these two points of view--as pointed out in Mr. Kravis' article.[48] This has undoubtedly influenced the nature of Tariff Commission verdicts in the past. But the recent additions to the Commission may have swung the balance of power in the opposite direction--the last five investigations

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[47] U.S. Tariff Commission, Spring Clothespins, Report to the President on the Investigation Under Part III of Executive Orders 10004 and 10082 with Respect to Article XI (Escape Clause) of the Trade Agreement with Mexico, (Washington, 1950), p. 5.

[48] Irving B. Kravis, "The Trade Agreements Escape Clause," pp. 325, 326.

have ended in decisions to recommend relief for the domestic industries involved.

We have yet to discuss the influence that the Presidents have had on the final disposition of "escape clause" applications. Only five "escapes" have been proclaimed (as of August, 1954) and this brings up the point we must discuss here--Why has the President not always heeded the Tariff Commission's advice to relieve domestic producers from increased import competition?

Although the Trade Agreements Extension Act of 1951 does not mention it, Executive Order 10082 provided that the President may consider the Tariff Commission recommendations in the light of the "public interest".[49] Clearly, this can be interpreted as broadly as the chief executive desires, and it gives him the authority to keep "escape clause" activity in line with administrative policy, although--in the United States--domestic policies and foreign trade policies have not always been compatible. Nevertheless, the President is responsible for the overall welfare of the economy, and he is in a position to weigh the effects of increasing tariff barriers, which--because of retaliation--may harm our export markets, against the advantages of keeping a small domestic industry prosperous.

As we have seen, there was little justification for recommending or proclaiming tariff increases in the women's fur felt hat and hatters' fur cases; President Truman seems to have realized that relief action was contrary to the United States foreign economic policy of 1952 when he wrote the message rejecting the Tariff Commission's advice

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[49] 3CFR, 1949 Supp., p. 127.

to aid the garlic growers.[50] A section of this message will serve to indicate the essence of our foreign policy at the time.

> ...there are many reasons for welcoming the increase in imports of Italian garlic. The United States has a stake in the strength and prosperity of Italy. We have recognized that fact in the aid we have given to Italy under the European Recovery Program and under the Mutual Security Act.... But Italy still needs to find ways of earning more dollars and she is trying earnestly and with some success to earn them. Every obstacle the United States puts in her way (he later mentions the tariff increases on hats and hatters' fur and the import restrictions on cheese as being some of these obstacles) in these efforts is a step harmful to our mutual security and costly in the end to the consumer and American taxpayer.

The President also stated in this message that he would like to see the "escape clause" administered in the light of promoting foreign trade, not in contracting it. This policy is, of course, in line with the more popular theme of "trade, not aid". As a final criticism of the Commission's conclusions in the garlic investigation, the President stated:

> In the total economy of the United States and, it seems to me, in the economy of the several domestic producers, garlic plays a minor part; to restrict imports of garlic under the circumstances portrayed in this report would violate the spirit as well as the intent of our trade agreements program.[51]

The "escape" invoked on dried figs[52] is probably no more defensible, in view of our proclaimed foreign trade policy, than its two

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[50] U.S. Tariff Commission, Garlic, Report to the President on the Escape Clause Investigation, With the President's Statement on the Commission's Recommendations, (Washington, 1953), pp. 27, 28.

[51] Ibid., p. 28.

[52] U.S. Tariff Commission, Figs, Dried, Report to the President (1952) on the Escape-Clause Investigation, With Appendix--Proclamation by the President and Report to the President (1953) on the Investigation Under Executive Order 10401, With Appendix--Letter from the President, (Washington, 1953), p. 3. Also see Table V.

predecessors. The principal exporters affected by this move--Greece, Turkey, and Italy--have all been the recipients of United States aid as part of their recovery programs and could ill afford to lose this dollar market. But again there was no doubt that imports and inventories of dried figs were increasing and prices were falling. However, this was not the first sign of trouble for the fig industry; in the years 1935-1939 and 1947-1949, substantial quantities of dried figs were diverted from normal channels of trade by the use of federal funds.

President Eisenhower's decision to restrict imports of alsike clover seed may be viewed as the lesser of two evils. On June, 1953, the Commodity Credit Corporation held 4.7 million pounds of alsike--about one-third of the entire 1952 crop and though it had reduced the stock to 1.9 million pounds by April, 1954, 16 cents per pound was lost in the transaction. The President may have thought it wise to limit imports of the commodity rather than risk the resumption of a price support program for the item.

The "escape clause" relief granted on watches (1954)[53] is something of a land-mark in "escape clause" procedure. In defending his decision, the President claimed that maintenance of a strong domestic watch industry was necessary if we were to preserve our work-force of skilled watch craftsmen--an indispensable defense measure.[54] It remains

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[53] U.S. Tariff Commission, Watches, Movements, and Parts (1954), Report to the President on Escape-Clause Investigation No. 26 Under the Provisions of Section 7 of the Trade Agreements Extension Act of 1951, (Washington, 1954).

[54] "President Raises Duty on Watches; Swiss Indignant," New York Times, July 28, 1954, p. 13, Col. 5.

to be seen just what repercussions this decision will have on our foreign trade, but it is not unlikely that Switzerland will take retaliatory steps because of this blow struck at her chief industry.[55] Not only Switzerland, but all Europe, had been awaiting the President's decision in the case as an indication of our foreign trade policy under the present administration. And following the announcement of an increase in watch tariffs, a wave of applications for relief from other industries have been filed with the Tariff Commission. If there is a trend toward more tariff protection, the industries which have been struggling for more protection will be quick to take advantage of it.

Although the President rejected the Tariff Commission's recommendations to increase the tariffs on lead and zinc, his simultaneous announcement of a plan to assist the industry can be taken as approval of the Tariff Commission's finding that the producers of these commodities were in distress.[56] Instead of granting the tariff increase, President Eisenhower substituted a proposal to increase government purchases of lead and zinc through an expanded stockpiling program. While expressing the belief that "there is a real question as to whether the tariff action would have important consequences in reopening closed mines,"[57] the President seems to have been primarily concerned with defense considerations in this case, since both lead and zinc are considered strategic materials. However, the President also notes the

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[55] Ibid.

[56] U.S. Tariff Commission, Public Information, White House Statement Concerning the President's Action on Lead and Zinc, (Washington, August 23, 1954).

[57] Ibid., p. 2.

possible foreign trade aspects of increasing tariff barriers: "Since the benefit to be derived from increase of the tariff on lead and zinc are so uncertain, I am not prepared to seek them at the expense of the serious adverse consequences that would follow for our international relations."[58]

We have already touched on some of the reasons for the President's rejections of Tariff Commission recommendations, but we might summarize them briefly here. The jeweled watch industry (1953), the President argued, had merely failed to keep pace with the expansion of imports and this was not sufficient reason for raising the tariff in view of the effect it would have on our trade relations with Switzerland.[59] And the Commission's request for relief for the brier pipe industry was rejected on the grounds that imports were not primarily responsible for the problem.[60] The groundfish fillet industry was denied relief by the President because he felt that the development of a new product--fish sticks--would lead to an increase in domestic consumption of groundfish fillets.[61] In this case, President Eisenhower pointed out that it was folly to halt the development of a larger market for the commodity since increased consumption was the best solution to the

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[58] Ibid., p. 1.

[59] U.S. Tariff Commission, Watches, Watch Movements, Watch Parts, and Watchcases, Report to the President on the Escape-Clause Investigation, With the President's Statement on the Commission's Recommendations, (Washington, 1953), p. 78.

[60] The White House, Press Release, Letter to the Chairman of the Senate Committee on Finance and the Chairman of the House Ways and Means Committee, (Washington, 1953), November 10, 1953, p. 2.

[61] "Eisenhower Bars Higher Fish Duty," New York Times, July 3, 1954, p. 17.

industry's problem. It is not unlikely that the pressure from our Canadian neighbor (the chief exporter of these fillets) was instrumental in this decision.

In reply to the Tariff Commission's claim that imports of scissors and shears threatened injury to domestic producers, the President argued that he could find no evidence to support this claim.[62] Independent inquiries into the situation, he asserted, turned up no evidence to indicate that the industry was injured or showed any signs of being hurt in the future.

There is little evidence of any sort of pattern in decisions to reject the Tariff Commission's recommendations. International considerations seem to have been factors in the decisions on the watch (1953), garlic, and the lead and zinc cases. Nevertheless, the defense factor outweighed the international considerations in the 1954 watch investigation. Disagreements with the Commission's idea of "serious injury" was evident in the scissors, watch (1953), and garlic cases, while domestic developments were responsible for ruling out relief to the brier pipe and groundfish fillet industries.

After observing all these forces which have influenced the disposition of "escape clause" applications, we are still unable to point to any one factor responsible for the discrepancy between the number of applications filed and the number of industries granted relief from increasing imports. We can only summarize the dominant factors which

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[62] U.S. Tariff Commission, Public Information, Statement of the President Declining to Accept the Tariff Commission's Recommendation for Increase of the Duty on Imports of Certain Types of Scissors and Shears, (Washington, May 12, 1954).

have accounted for the discrepancy. It is clear that many applicants did not have a valid case for claiming they were suffering serious injury--though they were probably going on the assumption that the provision would be interpreted as the minority group of Commissioners would like to use it. Others who applied for relief--and some who got it--were suffering from domestically caused problems which could hardly be viewed as sound economic reasons for disturbing our trade treaties.

In any event, the high level of national income and employment during the post-war years has afforded most domestic producers a profitable market for their wares in spite of increasing imports. We can be sure that had the domestic conditions in the United States been less favorable in the immediate past, the number of applications for relief and the number of approvals of such applications would have been greater.

Chapter VI

DO WE NEED THE ESCAPE CLAUSE? CAN IT HELP OUR DOMESTIC INDUSTRIES?

The question we want to consider in this chapter is: Will the application of the "escape clause" help or hinder the national economy as a whole? We must answer this question before we can determine whether the clause should be maintained or dropped in future revisions of the reciprocal trade agreements law. We will not consider, here, the validity of the defense argument, which is primarily a political issue. Where defense considerations are important, the best answer seems to be stockpiling and subsidization under the defense program as suggested by the Randall Commission. Even in the watch industry, where it is claimed that protection may be necessary to preserve invaluable human skills, it can be argued that subsidization may have been better economics even though such a program was politically impractical at the time of the investigation.

An inclusive yardstick for the measurement of economic performance of the "escape clause" is given by a simple theoretical framework. The "need" for protection of the domestic producer is a direct function of the market elasticity of the product. If the supply of a product is elastic, the producers can switch readily to different products, and it is good economics to shift the suppliers' resources to a better and more profitable use. Protection in this case would interfere with best resource allocation, even in the short run.

If the supply of the product is inelastic, the possible effectiveness of the "escape clause" must be judged by the elasticity of demand.

In case higher tariffs will raise the price, will the consumer cut his demand for the product and do without, or can he switch his demand to an acceptable substitute? Where the consumer has a good alternative to the purchase of the protected commodity, relief under the "escape clause" will backfire against its beneficiaries and result in a loss of sales volume which will wipe out the added unit gains.

Only when both supply and demand are inelastic can added protection provide a short-run economic gain by preserving an existing investment at a lesser cost to the consumer. We shall now survey the facts available on twenty-four of the products and industries which have been represented in past "escape clause" investigations to see whether the "escape" provision could have (or has) been used to economic advantage.

First, let us consider how many of the industries represented could probably adjust to increased import competition without undue hardship, i.e., producers whose supply is elastic. For our discussion, the products of these firms will be classified in three different categories--depending on the ease with which the producers could be expected to make the switch away from the import-competitive product. Since the majority of producers are multi-product firms, the ease of adjustment should be related to the proportion of their total business which is represented by the output of the commodities in question. Thus, the classifications will be: (1) Commodities which constitute a very minor part of the output of multi-product firms, (2) Commodities which are a substantial, yet minor, part of the production of such firms, and (3) Commodities which are a major part of the production of multi-product firms.

Each classification will be presented in a separate table, and, within each table, the list of commodities will be accompanied by a "remarks" column summarizing the pertinent factual data which seem to justify the inclusion of the commodities in that particular category. It is hoped that the tabular form will be sufficiently self-explanatory to obviate the necessity for discussing each case.

A third of the cases fall into the first category:

Table II

COMMODITIES WHICH CONSTITUTE A VERY MINOR PART OF THE OUTPUT OF MULTI-PRODUCT FIRMS

Commodity	Remarks
Mustard seed	In 1951, mustard seed production comprised only 2.7% of the farm value of all crops in the five Montana counties which produce 95% of total United States production.
Garlic	In 1949, the value of the garlic crop was only 2.6% of the total value of all vegetables grown in the three California counties which produce over 80% of total United States domestic production of garlic.
Bonito, canned in oil	United States production of this commodity, in 1951, was less than .2% of domestic production of tuna canned in oil--both are products of the same fish canneries.
Glace cherries	The 1948-1951 average output of glace cherries accounted for less than 4% of the total value of output of the twelve firms which make 80% of the domestic product.
Cotton carding machinery and parts	Only two American producers are engaged in this industry. For both Saco-Lowell Company and Whitin Machine Works, the production of cotton cards and parts accounts for a relatively small part of their total business.

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Table II
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Commodity	Remarks
Pregnant mares' urine	The United States producers concerned are a small number of farmers--widely scattered over Illinois, Michigan, and Ohio. In the two years--1951 and 1953--only sixty to sixty-five of these farmers had contracts for the sale of the product.
Screen-printed silk scarves	Of the thirteen producers who supplied the Tariff Commission with data, almost all produced scarves of other material, as well as other items of women's neck-wear, in addition to the silk scarves. For these concerns, in 1952, screen-printed silk scarves accounted for only 5% of total business.
Blue-mold cheese	Twenty-two plants in Wisconsin, Minnesota, and Illinois produce this commodity, but for most of them blue-mold cheese is merely a side-line of their other milk-cheese operations.

Source: United States Tariff Commission

As indicated in the remarks column, these commodities are of such minor importance to the majority of producers that the items could easily be dropped from domestic production without much impact on employment, sales, or investment. Hence, supply is very elastic. The cases of mustard seed and garlic are excellent examples of the ease with which the transition could be accomplished for producers in this group. Garlic is grown as a rotation crop on the same land, with the same labor used for producing sugar beets, vegetables, and alfalfa; and, except for a small amount of special equipment which would become obsolete, there would be virtually no repercussions if the farmers gave up garlic growing. Mustard seed is also an alternate crop for wheat land. In fact, an important point brought out in the investigation of

the industry was that farmers had, because of wheat price supports, transferred land from mustard to wheat production.

The second category includes industries where the particular commodities are a more important factor in the total business of most producers. In this group we find:

Table III

COMMODITIES WHICH CONSTITUTE A SUBSTANTIAL, THOUGH MINOR, PART OF THE TOTAL OUTPUT OF MULTI-PRODUCT FIRMS

Commodity	Remarks
Wood screws of iron and steel	Wood screw production is the smaller part--accounting for less than half of the employment--of the total business of the eighteen producers who also make other kinds of screws, nuts, rivets, hand tools, and other types of hardware.
Household china tableware	In 1953, five of the ten domestic producers made 67% of the United States output of this commodity, but these same firms produced more hotelware than tableware. Only three firms produce the product exclusively, and the other two firms produce other types of ceramics.
Rosaries	In 1952, rosaries accounted for about 45% of the total sales of twenty-three manufacturers who make a wide variety of religious jewelry. Some also produce military insignia. Only 225 workers in the United States were engaged in making rosaries in 1952.
Wood-wind musical instruments	Of the twenty-five American producers, twelve are multi-product firms which account for about 80% of the total value of domestic wood-wind products. Only 900 workers were employed in the occupation in 1952, and being highly skilled, they are much in demand by producers of radar and other precision equipment.
Spring clothespins	There are seven domestic producers of clothespins, but the product constitutes the entire output of only one firm. Clothespins make up 50% of

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Table III
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Commodity	Remarks
	the total business of two others, 16-25% of all business for two more, and less than 10% of total business of the others. Some of these firms carry on a variety of other activities ranging from sawmills to cannery operation--two firms even import spring clothespins. In 1951, only 525 workers were employed in the industry.

Source: United States Tariff Commission

It is reasonable to expect that these producers would feel the impact of further increases in imports, but the question again arises: Do they have a way out; is supply elastic? A look at the remarks column in the preceding table shows that adjustment of the firms to the situation--a switch to other output--should not involve a serious displacement of resources, labor, or investment. Since many of these firms are highly diversified and are getting the major part of their income from other products, the alternative open to them is clear. Many could expand output of their other products, and certainly a major portion of their employees and plant would be fully utilized even if it were necessary to retool or re-equip a part of the plant to further diversify production.

The wood screw industry, for example, could now be making plans to cope with the declining use of wood screws caused by the substitution of metal products for those of wood. The firms in this industry might well emphasize production of metal fasteners--a product which most of them already make.

A look at the employment figures will also serve to indicate the size of the adjustment problem for the industries in this category. Outside of the wood screw industry, less than 4,000 workers are involved in production of the commodities in this group. There is no doubt that many of the workers--especially those in the stronger companies--would still be employed in their old jobs for years even if import competition increased. Others would be displaced only gradually and could be absorbed into other operations of the multi-product producers. We may conclude, therefore, that for producers of the commodities in this category--taken as a group--supply is quite elastic and the "escape clause" is not necessary for their survival.

There is yet a third category of multi-product firms engaged in producing commodities which have been the subject of "escape clause" investigations. For this group of producers, however, the product with which we are concerned comprises a major part of the producers' total business.

Table IV

COMMODITIES WHICH CONSTITUTE A MAJOR PART OF THE OUTPUT OF MULTI-PRODUCT FIRMS

Commodity	Remarks
Bicycles and parts	There are ten domestic producers of this commodity whose output accounts for 95% of total United States production. Six of the ten also make other products; but for all ten producers, bicycles constitute 2/3 of the total volume of their business. In addition to bicycles, many of these manufacturers also produce wheeled goods for children, power lawn mowers, exhaust fans, and defense items.

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Table IV
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Commodity	Remarks
Watches	Four firms--Bulova, Elgin, Hamilton, and Waltham--produce the bulk of United States production of watches, and for each of these companies the manufacture of watches is a major part of their total activity. However, Bulova has been a large importer of Swiss movements for years, and more recently, Elgin, Hamilton, and Waltham have entered the import-assembly business. In addition to emphasizing production of higher-jeweled, less-competitive movements, Elgin has further diversified by producing men's and women's jewelry.
Scissors, shears, pedicure and manicure nippers	Pedicure and manicure nippers production is relatively unimportant. For only four of twenty-seven producers did nippers account for more than 30% of total value of the firms' production of scissors, shears, and nippers. Twenty-one of the twenty-seven domestic producers make products other than scissors, shears, and nippers, but for eighteen of them, these products account for over 50% of total output.

Source: United States Tariff Commission

The majority of bicycle and scissors manufacturers already have diversified production which should pave the way for adjustment, i.e., they have plant and labor which is adaptable to production of alternate products which are less competitive with imports. The watch industry, too, is probably more flexible than is generally believed.

For example, after the watch industry's first request for "escape clause" relief had been turned down, Elgin undertook an active program of adjustment. This firm has concentrated, since, on the less competitive, higher-jeweled watches and has, through one subsidiary, switched to the casing and merchandizing of watches with Swiss movements; while another subsidiary produces such items as compacts and men's jewelry.

Elgin President, J. G. Shennan, in commenting on this development, stated that: "Our plight and what we are doing about it, perhaps provides a perfect case history of a United States industry which has been caught up in the international trade problem and which has resolved boldly to extricate itself."[1] Though we shall have to wait to see how the recent increase in watch tariffs will affect the industry, it will no doubt lessen the incentive for other firms to follow Elgin's example.

For the three cases we have just considered it is difficult to determine the elasticity of supply; but indications are that, given an incentive to do so, these producers could either expand production of other non-import-competitive products or add new products to their present lines.

Thus, we have seen that two-thirds of the cases--those which we have already surveyed--show indications of supply elasticity. In some cases the elasticity is higher than in others; but in all these instances it is quite possible that the majority of producers could adjust to import competition; therefore, we may say that the use of the "escape clause" is hard to defend from an economic viewpoint. This is not to deny, however, that there may be individual firms in many of the industries which will be faced with serious reorganizational problems if the industry, as a whole, is forced to adjust to import increases, one of the unfortunate by-products of a competitive economy.

Now we come to a group of commodities which are either the major product or the sole product of the domestic producers and for which a

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[1] Staff Papers, Presented to the Commission on Foreign Economic Policy, (Washington, 1954), p. 386.

shift in production appears to be more difficult than in the preceding cases. Assuming the supply elasticity to be low, we must investigate how these products measure up against our second criterion--is the demand for the particular products elastic? This group includes the following eight cases.

Table V

INDUSTRIES FOR WHICH SUPPLY MAY BE INELASTIC

Commodity	Remarks	
	Supply	Demand
Women's fur felt hats and hat bodies	Twenty firms produce fur felt hat bodies, though all but one make men's hat bodies, too. Production of the women's item is about 30% of the total output. A shift from women's hats to men's offers little relief because it appears that the demand for men's hats is declining. The 3,817 employees are highly concentrated--85% of the factory wages in Danbury and 50% in Norwalk are paid by this industry.	Wool felt hats and hats of other materials are good substitutes for fur felt hats. The choice between a wool felt body and a fur felt body is governed chiefly by price--the fur felt body being the more expensive.
Hatters' fur	Forty independent producers of this commodity are located in the Newark-New York City area. This industry, with its 1700 workers, is directly dependent on the hat industry--its sole market.	The demand for this product, being so closely tied to the demand for fur felt hats, cannot be considered as any more inelastic than the demand for the finished product--fur felt hats.
Metal watch bracelets	Forty-five firms are engaged in the production of this commodity and for many this is the sole output. The sale of watch bands accounts for the bulk of total sales for even the diversified producers.	Good substitutes for this product are: watch bands of cloth, leather, and plastic--most of which are considerably cheaper than a good metal watch band.

Table V
(continued from preceding page)

Commodity	Remarks	
	Supply	Demand
Chalk Whiting	There is only one producer of this commodity in the United States. Nevertheless, this product accounts for over 90% of his total business.	The development of an excellent substitute for this product is responsible for the decline in domestic production. It has been replaced by calcium carbonate derived from limestone.
Motorcycles	Only three firms in the United States make motorcycles, but it is the sole product (along with parts and accessories) of all of them.	Motorcycles are definitely a high priced specialty item for which demand could be expected to be elastic. As a transportation item of such high unit value, it must compete with low priced automobiles.
Dried figs	The supply of dried figs may be considered short-run inelastic because of the considerable investment in the 28,000 acres of producing trees.	Other dried fruits and the endless variety of cookies are good substitutes for the dried fig products--packaged dried figs and fig paste used in fig bars.
Groundfish fillets	The New England fishing fleet's most important activity is ground-fishing. Furthermore, it is highly localized in a few coastal towns where it constitutes a major industry.	The demand for fish fillets would seem to be very elastic in view of the preference for other meats by many consumers.
Brier pipes	In 1953, this product was the sole product of most of the thirteen domestic producers. The 1,225 workers are mostly older, highly skilled men.	In spite of the reluctance of died-in-the-wool pipe smokers to switch to cigarette or cigar smoking, the trend for many years has been away from pipe smoking. Extensive advertising and the convenience of cigarette smoking has won the majority of smokers over to the cigarette habit.

Source: United States Tariff Commission

For some of the producers of these commodities, the transition of production would probably not be difficult if management aggressively pursued the possibilities of making new items. In the classification of these industries into the various categories, I have recognized the concentrated production areas and one-industry towns as factors adding to the difficulty in finding alternate employment for workers, plant, and equipment, e.g., the fur felt hat industry. However, we can now point to specific evidence that industries forced to diversify their production in the face of import competition, and communities faced with closed plants have risen to the occasion and emerged more prosperous than before.[2]

The best form of adjustment to a changing demand is a diversification of products because the same plant, management, and employee skills are retained intact. An example of this type of solution to meet import competition is evidenced by the previously mentioned successful operations of the Elgin Watch Company. The screen-printed silk scarf industry presents another instance where the producers met the problem of import competition without any outside aid. The Tariff Commission recommended relief for this industry in an "escape clause" investigation in 1953, but the President rejected the advice of the Commission.[3] Now the producers in this industry have switched to importing and merchandising silk-scarves and have branched out into other forms of printing

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[2] Ibid., pp. 384-391.

[3] U.S. Tariff Commission, Screen Printed Silk Scarves, Report to the President on the Escape Clause Investigation, (Washington, 1953).

on textiles. The tariff problem, for this industry, is no longer significant.[4]

Nor does it appear that a catastrophe is inevitable when a small community's entire industry is forced to close down. One of the strongest reasons voiced in support of permitting an industry relief under the "escape clause" is based on this argument. But such a situation has developed in the New England textile areas and in the Pennsylvania, West Virginia, and Ohio Valley anthracite coal mining areas. In some cases the individual communities have been very successful in offsetting the loss of the previous source of income and employment.[5]

Some communities have been able to attract new industries to occupy old plants, while others have found it necessary to construct new plants for the new industries; but in either case, the workers of the areas have been retrained and employed in new jobs. The New England communities, formerly supported by the textile industry, have been hurt by the movement to the South of that industry as well as by the industry's inability to compete with imports, but the productive facilities left behind have found many new uses. For example, within one year, the community leaders of Lawrence, Massachusetts, brought twenty firms to the area to utilize the closed textile mills and these firms alone employ 4,000 people.[6] One of these firms--Western Electric

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[4] Staff Papers, p. 386.

[5] Ibid., p. 388.

[6] Ibid., p. 388.

Company--manufactures telephone parts there and is now building a new plant of its own in the area.

Communities in the anthracite coal mining areas have been confronted with situations identical to those facing the communities supported by the pottery, glass-blowing, and similar handicraft industries. The positive methods by which some of these areas are attacking their problem is exemplified by the program underway in Scranton, Pennsylvania.[7] Here, with $4 million raised for the purpose, thirty-three new plants have been built and sixty-five other plants have been expanded in an effort to overcome the dependence of the community on the coal industry. And in Herrin, Illinois, a town of 11,000 people, $800,000 was raised, another $800,000 borrowed from an insurance company; and with these funds four new plants were built for diversified industries which are expected to employ former bituminous coal miners and their families. These are only a few examples of the many constructive plans undertaken by community leaders to adjust to new situations, and the apparent success in relocating industries to absorb idle plant and labor indicates the weakness of the argument for retarding the eventual adjustment facing some of our highly protected industries. But since the need for such initiative must arise before we can determine the difficulty of adjustment in individual cases, we can only speculate as to the elasticity of supply in the cases under consideration here. Nevertheless, the demand for the products in Table V appears to be so elastic that it does not change our analysis whether we classify the commodities as

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[7] Ibid., p. 389.

[8] Ibid., p. 389.

products of industries with elastic supply or of industries for which supply is rather inelastic.

Since most of the cases are fairly clear-cut, as far as elasticity of demand is concerned, we may go on to have a look at some of the products in this group on which tariffs have been increased as a result of "escape clause" investigations. But since the time elapsed since the withdrawal of the concessions has been so short we must be cautious in interpreting such statistics as are available as to the results of the tariff increase. For example, we cannot tell for certain whether the initial decline in imports the year following a tariff increase is attributable to that increase or to the previous inventory build-up by the importers in anticipation of the tariff increase. If the product is not perishable, it is not unlikely that importers will buy heavily in the year when the industry is being considered for a tariff increase. We know this to have happened in the recent watch investigation.[9]

At this point, let us look at the statistics reflecting the activity in the industries which were granted increased tariff protection prior to 1954. (See Table VI.)

Although the data in Table VI cover a very short period and are incomplete--recent United States production figures for the products

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[9]"President Raises Duty on Watches; Swiss Indignant," New York Times, July 28, 1954, p. 13, col. 5. Importers moved more than $1 million worth of watch movements and parts into the foreign trade zone at Stapleton, Staten Island before the recent tariff increase became effective. Under a provision of the Trade Zone Act they had the imports classed as "privileged" and they may now store them in the zone indefinitely. When they do clear the watch movements through customs, they will pay only the rate of duty effective at the time the movements were stored.

being unavailable[10]--the figures do illustrate several pertinent points. In the dried fig and hatters' fur cases, the decrease in imports during the year in which the tariff was increased, followed by a subsequent increase to pre-"escape" levels, indicates that importers may have stocked up on these items in anticipation of the tariff increase.

Table VI

IMPORT STATISTICS ON COMMODITIES FOR WHICH ESCAPE CLAUSE RELIEF HAS BEEN PROCLAIMED

Commodity	1951	1952	1953
DRIED FIGS			
U.S. Merchantable production (lbs.)	46,800,000	N.A.	N.A.
Imports of dried figs (lbs.)	7,094,000	4,108,065	7,415,693
Imports of fig paste (lbs.)	42,800	2,382,956	1,374,028

Commodity	1949	1950	1951	1952	1953
HATTERS' FUR					
U.S. Production (lbs.)		5,155,000	N.A.	N.A.	N.A.
Imports (lbs.)	150,188	282,000	246,974	132,730	247,957

Commodity	1949	1950	1951	1952	1953
WOMEN'S FUR FELT HATS AND HAT BODIES					
U.S. Production (doz.)	566,000	646,000	768,000	N.A.	N.A.
Imports of all hat bodies (doz.)	120,511	260,000	121,130	115,961	131,356
Imports in the $9 to $24 bracket (doz.)	106,426	238,582	88,670	88,190	84,151

Source: U.S. Tariff Commission Reports

[10] See Appendix "M".

Two instances of the substitution of one imported item for another to avoid the tariff increases are also evident. Note the increase in the importation of fig paste which accompanied the decrease in dried fig imports during 1952. Since much of the imported figs is ground into fig paste upon arrival in the United States, the importers circumvented the tariff increase by increasing their purchases of the processed fig paste.

The substitution of fur felt hats of values outside the $9 to $24 per dozen category for the hats on which tariffs had been increased is also evident in the statistics. The imports of hats in the $9 to $24 per dozen brackets decreased much more than did the imports of hats in all value brackets. Apparently the importers switched part of their demand to the value brackets on which the tariffs remained unchanged.

Until statistics are available on the behavior of United States production of commodities on which tariffs have been increased following an "escape", we shall have little factual evidence to indicate the ultimate effect of the provision on domestic industries. Nevertheless, this survey of the market situations faced by the applicant industries fails to reveal an instance in which we can be certain that beneficial results would follow the granting of "escape clause" relief.

Furthermore, we cannot estimate the actual number or the extent of import programs which have been discouraged by the mere existence of such a clause. But we may be certain that the provision does act as a deterrent in that foreign nations must consider the possibility of being excluded from the United States market after the expense of developing a successful market for their products.

Chapter VII

CONCLUSION

We have followed the development of the "escape clause" from its modest beginning to its present status as a major provision in the United States reciprocal trade agreements laws; we shall now attempt an evaluation of this provision. We have noted the mounting significance which domestic producers have attached to this clause, and after the preceding analysis of the administrative problems involved in the interpretation of the phrase and the conduct of the investigations, one may well ask whether the provision is worth all the controversy.

It is argued that an "escape" provision must be included in the trade agreements program if Congress is to continue the policy of granting such treaty-making powers to the administrative branch. Certainly, a trade agreements program with an "escape clause" is a preferable alternative to a procedure whereby Congress reserves the right to ratify each trade agreement, but such an arrangement also provides the means by which it is possible for the Tariff Commission and the President to touch off a spiral of tariff reprisals which could raise tariff barriers sufficiently to paralyze foreign trade.

We have also noted that interested industries in the United States have spent millions campaigning for a more positive guarantee that they will not suffer from import increases. To this end they have employed numerous tariff "experts" to extoll the virtues of strong "escape clause" laws before the Congressional Committees who are charged with the responsibility of revising our trade agreements program. There is

no doubt that these industries are vitally interested in the preservation and strengthening of "escape clause" provisions, but it is our purpose to inquire into the benefit of the "escape clause" to the overall economy of the United States. Furthermore, as we have seen in Chapter VI, most of these industries do not need the "escape clause" since they enjoy elasticity of supply and it is possible that the invocation of the "escape" provision will not help any industry unless the demand for its product is inelastic.

It appears, therefore, that an "escape clause" is not an indispensable provision in our reciprocal trade agreements laws. In fact, this analysis seems to indicate that the clause is not economically desirable. An "escape clause" serves to impede the proper allocation of economic resources in the United States and abroad. As long as domestic producers have recourse to such protection they have little incentive to search for better means of utilizing their productive facilities. And certainly an "escape" provision facilitates the blocking of foreign nations' efforts to sell in the United States market in competition with American producers. Obviously, the "escape" provision can be used to completely sterilize all that a reciprocal trade program is meant to achieve, i.e., the expansion of world trade to the benefit of the citizens of all nations.

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APPENDIX

APPENDIX "A"

Sec. 336. Equalization of Costs of Production (Tariff Act of 1930)

(a) Change of Classification or Duties. In order to put into force and effect the policy of Congress by this Act intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the Commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. *** The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

* * * * * * * * * * *

(c) Proclamation by the President. The President shall by proclamation approve the rates of duty and changes in classification and in basis of value specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

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APPENDIX "B"

Applications Received Beginning July, 1948 for Investigations Under Section 336 of the Tariff Act of 1930

Date Filed	Commodity	Name of Applicant	Status
July 8, 1948	Almonds, shelled Almonds, blanched, roasted or otherwise prepared or preserved	California Almond Growers Exchange Sacramento, Calif.	Investigation completed. Report to President Nov. 10, 1949 No change in duty
Nov. 26, 1948	Lemons Lemon oil	California Fruit Growers Exchange Los Angeles, Calif.	Dismissed Mar. 21, 1949
Dec. 13, 1948	Wooden umbrella handles	Gus Schlesinger Co. Newark, N. J.	Dismissed Mar. 22, 1949
Jan. 24, 1949	Filberts, not shelled	Northwest Nut Growers Dundee, Oregon	Dismissed April 8, 1949
Mar. 15, 1949	Olive oil in all size containers	Olive Advisory Board SanFrancisco, Calif.	Dismissed May 4, 1949
June 3, 1949	Dental burs	Foreign Trade Committee of the American Dental Trade Association Washington, D.C.	Dismissed Jan. 13, 1950
Sept. 3, 1949	Filberts, not shelled	Northwest Nut Growers Dundee, Oregon	Dismissed May 4, 1950
June 30, 1950	Grape wines containing more than 14 percent of alcohol by volume	National Assn. of Alcoholic Beverage Importers, Inc. Washington, D.C.	Dismissed Sept. 15,1950
Feb. 16, 1951	Lead and lead bearing materials	Emergency Lead Committee New York, N. Y.	Dismissed May 29, 1951
June 18, 1951	Specified household china tableware, kitchenware, and table and kitchen utensils	Vitrified China Association, Inc. Washington, D.C.	Dismissed Oct. 24, 1951
May 13, 1952	Specified household china tableware, kitchenware, and table and kitchen utensils	Sen. Res. 253 82d Cong. (not listed as an application)	Investigation instituted May 15, 1952. Hearing held May 15, 16, and 17, 1953

Source: U.S. Tariff Commission

APPENDIX "C"

Sec. 516. Appeal or Protest by American Producers (Tariff Act of 1930)

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(b) Classification. The Secretary of the Treasury shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification of and the rate of duty, if any, imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the proper rate of duty is not being assessed, he may file a complaint with the Secretary of the Treasury setting forth a description of the merchandise, the classification, and the rate or rates of duty he believes proper, and the reasons for his belief. If the Secretary decides that the classification of or rate of duty assessed upon the merchandise is not correct, he shall notify the collectors as to the proper classification and rate of duty and shall so inform such manufacturer, producer, or wholesaler, and such rate of duty shall be assessed upon all such merchandise imported or withdrawn from warehouse after thirty days after the date of such notice to the collectors. If the Secretary decides that the classification and rate of duty are correct, he shall so inform such manufacturer, producer, or wholesaler, and shall...cause publication to be made of his decision, together with notice that the classification of and the rate of duty on all such merchandise imported or withdrawn from warehouse after the expiration of thirty days after such publication will be subject to the decision of the United States Customs Court in the event that a protest is filed under the provisions of this subdivision.

If dissatisfied with the decision of the Secretary, such manufacturer, producer, or wholesaler may file with him a notice that he desires to protest the classification or the rate of duty imposed upon the merchandise.... The Secretary shall direct the collector at such port to notify such manufacturer, producer, or wholesaler immediately upon the liquidation of the first of such entries to be liquidated. Such manufacturer, producer, or wholesaler may file, within thirty days after the date of such liquidation, with the collector of such port a protest in writing setting forth a description of the merchandise and the classification and the rate of duty he believes proper. Upon the filing of any such protest the collector shall notify the Secretary of the Treasury who shall order the suspension, pending the decision of the United States Customs Court upon such protest, of the liquidation, at all ports, of all unliquidated entries of such merchandise.... The decision of the United States Customs Court upon any such appeal or protest shall be final and conclusive upon all parties unless an appeal is taken by either part to the Court of Customs and Patent Appeals, as provided in sections 501 and 515 of this Act.

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APPENDIX "D"

Trade Agreements Act of June 12, 1934, as Amended

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Sec. 350. (a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time--

(1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and

(2) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any rate of duty, however established, existing on January 1, (even though temporarily suspended by Act of Congress), or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly, or indirectly: Provided, That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts (including the operations of international cartels) or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

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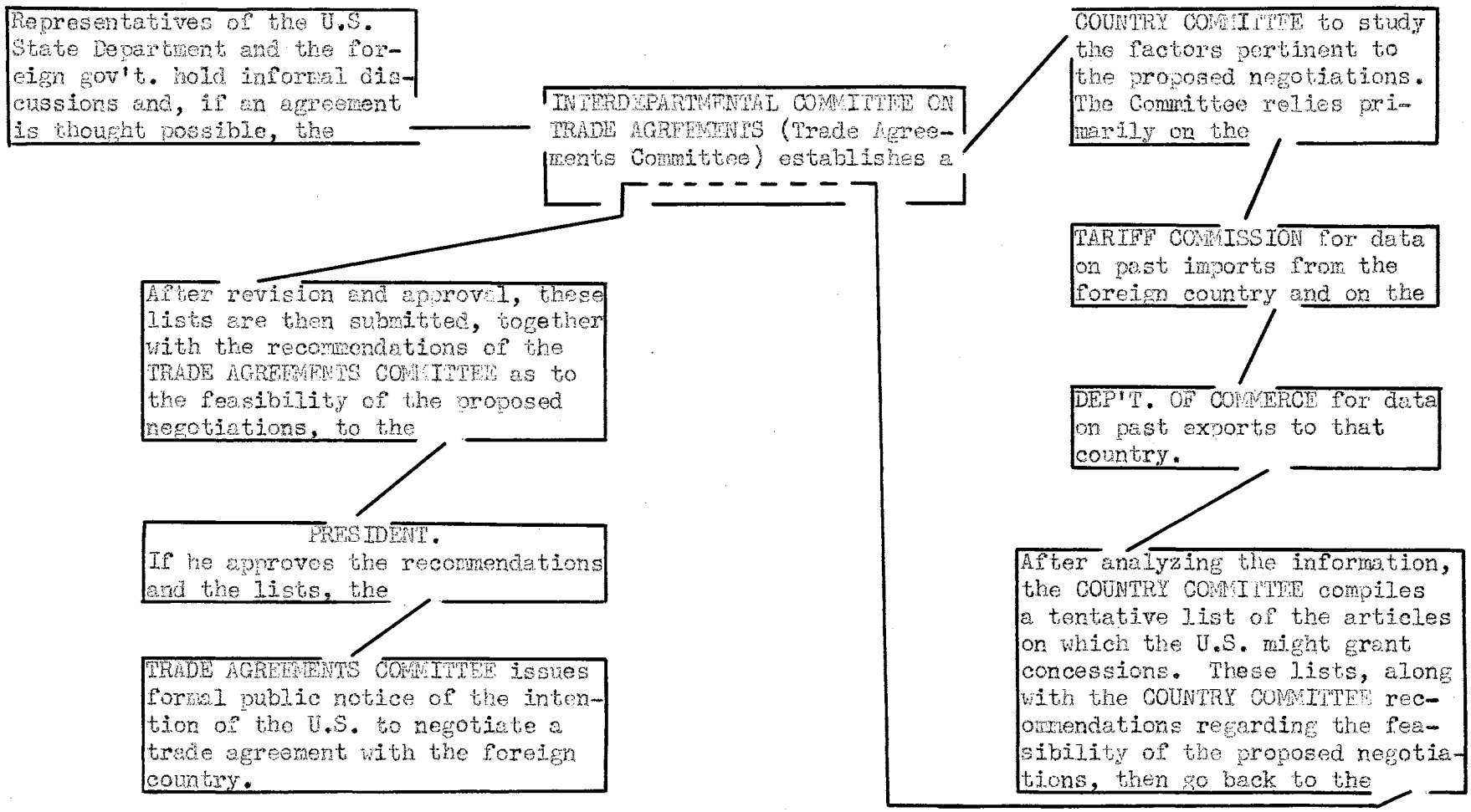
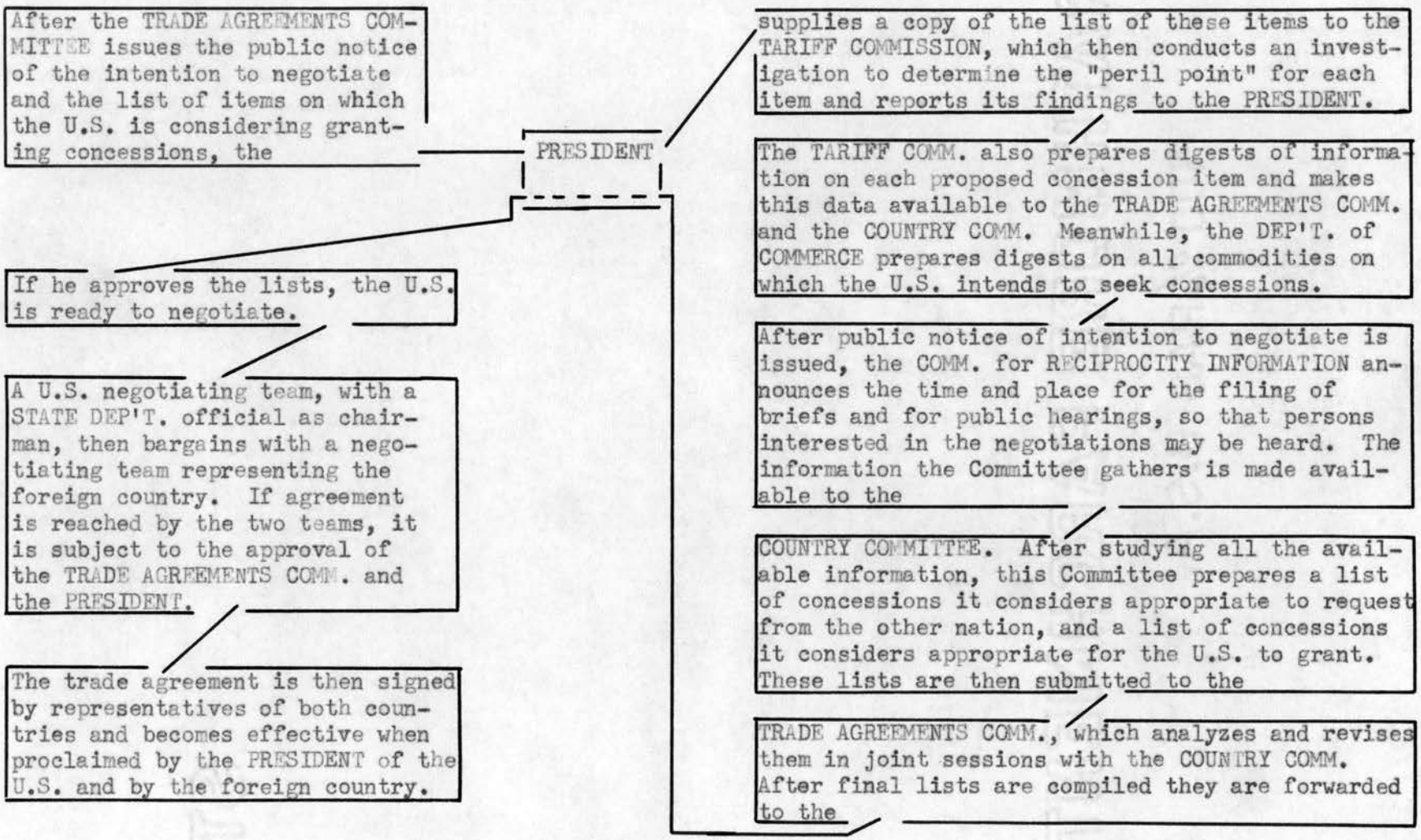
APPENDIX "E"

HOW A TRADE AGREEMENT IS MADE (Part I)



HOW A TRADE AGREEMENT IS MADE (Part II)



APPENDIX "F"

Trade Agreements Extension Act of 1951
(Pub. Law 50, 82d Cong., 1st sess)

(Peril Points)

Sec. 3. (a) Before entering into negotiations concerning any proposed foreign trade agreement under section 350 of the Tariff Act of 1930 as amended, the President shall furnish the United States Tariff Commission (hereinafter in this Act referred to as the "Commission") with a list of all articles imported into the United States to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or continuance of existing customs or excise treatment. Upon receipt of such list the Commission shall make an investigation and report to the President the findings of the Commission with respect to each such article as to (1) the limit to which such modification, imposition, or continuance may be extended in order to carry out the purpose of such section 350 without causing or threatening serious injury to the domestic industry producing like or directly competitive articles; and (2) if increases in duties or additional import restrictions are required to avoid serious injury to the domestic industry producing like or directly competitive articles the minimum increases in duties or additional import restrictions required. Such report shall be made by the Commission to the President not later than 120 days after the receipt of such list by the Commission. No such foreign trade agreement shall be entered into until the Commission has made its report to the President or until the expiration of the 120 day period.

(Escape Clause)

Sec. 6. (a) No reduction in any rate of duty, or binding of any existing customs or excise treatment, or other concession hereafter proclaimed under section 350 of the Tariff Act of 1930, as amended, shall be permitted to continue in effect when the product on which the concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products.

(b) The President, as soon as practicable, shall take such action as may be necessary to bring trade agreements heretofore entered into under section 350 of the Tariff Act of 1930, as amended, into conformity with the policy established in subsection (a) of this section.

On or before January 10, 1952, and every six months thereafter, the President shall report to the Congress on the action taken by him under this subsection.

(Escape Clause Procedure) APPENDIX "F"-- Continued

Sec. 7. (a) Upon the request of the President, upon resolution of either House of Congress, upon resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives, upon its own motion, or upon application of any interested party, the United States Tariff Commission shall promptly make an investigation and make a report thereon not later than one year after the application is made to determine whether any product upon which a concession has been granted under a trade agreement is, as a result, in whole or in part of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products.

In the course of any such investigation, whenever it finds evidence of serious injury or threat of serious injury or whenever so directed by resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives, the Tariff Commission shall hold hearings giving reasonable public notice thereof and shall afford reasonable opportunity for interested parties to be present, to produce evidence and to be heard at such hearings.

Should the Tariff Commission find, as the result of its investigation and hearings, that a product on which a concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concessions, being imported in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products, it shall recommend to the President the withdrawal or modification of the concession, its suspension in whole or in part, or the establishment of import quotas, to the extent and for the time necessary to prevent or remedy such injury. Within sixty days, or sooner if the President has taken action under subsection (c) of this section the Tariff Commission shall transmit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives an exact copy of its report and recommendations to the President.

(b) In arriving at a determination in the foregoing procedure the Tariff Commission, without excluding other factors, shall take into consideration a downward trend of production, employment, prices, profits or wages in the domestic industry concerned, or a decline in sales, an increase in imports, either actual or relative to domestic production, a higher or growing inventory, or a decline in the proportion of the domestic market supplied by domestic producers.

(c) Upon receipt of the Tariff Commission's report of its investigation and hearings, the President may make such adjustments in the rates of duty, impose such quotas, or make such other modifications as are found and reported by the Commission to be necessary to prevent or

(Escape Clause Procedure) APPENDIX "F"-- Continued

remedy serious injury to the respective domestic industry. If the President does not take such action within sixty days he shall immediately submit a report to the Committee on Ways and Means of the House and to the Committee on Finance of the Senate stating why he has not made such adjustments or modifications, or imposed such quotas.

(d) When in the judgment of the Tariff Commission no sufficient reason exists for a recommendation to the President that a concession should be withdrawn or modified or a quota established, it shall make and publish a report stating its findings and conclusions.

APPENDIX "G"

To Amend the Agricultural Adjustment Act and for Other Purposes (Public Act 320, 1935, H.R. 8492)

Sec. 22 (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which an adjustment program is in operation, he shall cause an investigation by the United States Tariff Commission to determine the facts.

(b) If on the basis of the investigation and report, the President finds such facts exist he will by proclamation impose such limitations on the total quantities of any articles imported as is deemed necessary so that the entry of the article won't interfere with any program or will not reduce substantially the amount of any product processed in the United States from any commodity subject to the adjustment program.

Provided that no limitation be imposed on the total quantity of any article which may be imported from any country which reduces such permissable total quantity to less than 50 percent of the average annual quantity of such article which was imported from such country during the period of July 1, 1928 to June 30, 1933.

APPENDIX "H"

Investigations Under Section 22 of the Agricultural Adjustment Act, as amended

Article	Letter from President	Investigation Ordered	Date of Hearing	Report Sent to President
Wheat and wheat products	Dec. 13, 1939	Dec. 14, 1939[1]	Jan. 4, 1940	May 19, 1941[2]
Cotton and cotton waste	July 26, 1939	July 26, 1939	Aug. 14-16, 1939	Aug. 25, 1939
Cotton having staple of 1-11/16 in or more in length		Dec. 4, 1940	Dec. 11, 1940	Dec. 13, 1940
American Cottonseed Cotton waste, reentered Cotton samples Cotton strips		Nov. 12, 1941	Dec. 10, 1941	Feb. 23, 1942
Long staple cotton--global quotas		May 12, 1942	-	June 10, 1942
Short harsh cotton quotas		Sept. 17,1946	Oct. 14 & 15, 1946	Dec. 31, 1946
Long staple cotton--modification of quotas		Jan. 23, 1947	Feb. 18, 1947	Apr. 21, 1947
Cotton having a staple of 1-1/8 inches or more		Jan. 15, 1948	Feb. 17 & 18, 1948	May 14, 1947 July 14, 1948-Suppl.[3]
Cotton having a staple of 1-1/8 inches or more in length-- Modification of quota and change in opening date		June 9, 1949	July 7, 1949	Aug. 11, 1949
Harsh or rough cotton--supplemental quota		June 30, 1950	July 18, 1950	Aug. 14, 1950
Extra-long-staple cotton--supplemental quota		Sept. 20, 1950	Sept. 29, 1950	Oct. 5, 1950
Extra-long-staple cotton--supplemental quota		Nov. 29, 1950	Dec. 11, 1950	4
Harsh or rough cotton--supplemental quota		May 28, 1951	June 13, 1951	June 19, 1951

Investigations under Section 22 - continued

Article	Letter from President	Investigation Ordered	Date of Hearing	Report Sent to President
Edible tree nuts	Apr. 13, 1950	Apr. 13, 1950 July 12, 1951[6]	June 27 & 28, 1950 Sept. 12-14, 1951	Nov. 24, 1950[5] Nov. 28, 1951
do (supplemental)	-	June 19, 1952	July 28, 29 & 30, 1952	Sept. 25, 1952
do (supplemental)	-	June 30, 1953	Aug. 24 & 25, 1953	Sept. 21, 1953
Wool and wool tops	Sept. 2, 1952	Sept. 2, 1952	Sept. 29, 30 & Oct. 1, 1952	4
Certain dairy and other products	Apr. 8, 1953	Apr. 10, 1953	May 4 & 5, 7 & 8, 1953	June 1, 1953
Oats	June 6, 1953	June 10, 1953	July 7 & 8, 1953	Oct. 9, 1953
Wool and wool tops	July 9, 1953	July 10, 1953	Aug. 31 & Sept. 1 & 2, 1953	Feb. 19, 1954
Rye, rye flour, and rye meal	Dec. 9, 1953	Dec. 11, 1953	Jan. 12, 1954	Mar. 8, 1954

Source: U.S. Tariff Commission

1. On January 25, 1940, the President directed that the scope of the investigation be extended in accordance with amendment to section 22. The investigation was extended on January 26, 1940.

2. There were other later steps in this investigation and supplemental reports were sent to the President on March 10, 1942 and on April 24, 1943.

3. Sent in response to request of President July 8, 1948, asking that the Commission reconsider its findings in light of changes in situation. The President also asked that an allocation procedure be set up.

4. Investigation was terminated. No report to President.

5. This was an interim report.

6. Hearing set on this date for September 5, 1951; postponed on August 22 to September 12.

APPENDIX "I"

Escape Clause Provisions in Executive Orders

Executive Order 9832, February 25, 1947

1. There shall be included in every trade agreement hereafter entered into under the authority of said act of June 12, 1934, as amended, a clause providing in effect that, if, as a result of unforeseen developments and of the concession granted by the United States on any article in the trade agreement, such article is being imported in such increased quantities and under such conditions as to cause, or threaten, serious injury to domestic producers of like or similar articles, the United States shall be free to withdraw the concession, in whole or in part, or to modify it, to the extent and for such time as may be necessary to prevent such injury.

Executive Order 10004, October 5, 1948

10. There shall be applicable to each concession with respect to an article imported into the United States which is granted by the United States in any trade agreement hereafter entered into a clause providing in effect, that, if, as a result of unforeseen developments and of such concession, such article is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry producing like or similar articles, the United States shall be free to withdraw the concession, in whole or in part, or to modify it, to the extent and for such time as may be necessary to prevent such injury.

Executive Order 10082, October 5, 1949

10. There shall be applicable to each tariff concession granted, or other obligations incurred, by the United States in any trade agreement hereafter entered into a clause providing in effect that if, as a result of unforeseen developments and of such concession or other obligation, any article is being imported in such relatively increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry producing like or directly competitive articles, the United States shall be free to withdraw or modify the concession, or suspend the other obligation, in whole or in part, to the extent and for such time as may be necessary to prevent such injury.

APPENDIX "J"

Article XIX. Emergency Action on Imports of Particular Products (GATT)

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such products, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligations in whole or in part, or to withdraw or modify the concession.

(b) If any product which is the subject of a concession with respect to a preference is being imported into the territory of a contracting party in the circumstances set forth in subparagraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part, or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Contracting Parties as far in advance as may be practicable and shall afford the Contracting Parties and those contracting parties having a substantial interest as exporters of the products concerned, an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Contracting Parties, the application to the trade of the contracting party taking such action, of such substantially equivalent obligations or concessions under this agreement, the suspension of which the Contracting Parties do not disapprove.

APPENDIX "K"

UNITED STATES TARIFF COMMISSION
Washington

RULES OF PRACTICE AND PROCEDURE

"Escape Clause" Procedure

Reproduced below is Part 207 of the Tariff Commission's Rules of Practice and Procedure having specific application to investigations under section 7 of the Trade Agreements Extension Act of 1951.

These rules should be read in conjunction with Part 201 of the Tariff Commission's rules, which are the Rules of General Application.

Part 207--Investigations of Injury to Domestic Producers on Account of Imports of Products on Which Trade Agreement Concessions have been granted.

* * * * * * * * *

Sec. 207.1 Applicability of rules regarding investigations under section 7, Trade Agreements Extension Act of 1951. The rules under this part are specifically applicable to investigations for the purposes of section 7 of the Trade Agreements Extension Act of 1951 (Pub. Law 50, 82d Cong.) and apply in addition to the pertinent rules of general application set forth in Part 201 of this chapter.

Sec. 207.2 Purpose of investigation. The purpose of an investigation under section 7 of the Trade Agreements Extension Act of 1951 is to determine whether an article on which a trade agreement concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported in such increased quantities, actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive articles.

Sec. 207.3 Applications. (a) Application for investigation for the purposes of section 7 of the Trade Agreements Extension Act of 1951 may be made by any interested person, partnership, association, or corporation having reason to believe that a product upon which a concession has been granted under a trade agreement is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to a domestic industry producing like or directly competitive products. Such applications must be filed with the Secretary, United States Tariff Commission, Washington 25, D.C.

APPENDIX "K"--Continued

(b) Applications for such investigations shall be typewritten, duplicated or printed, and fifteen clear copies must be submitted. They need not be under oath, but must be signed by the applicant or in his behalf by any authorized person, and should state the name, address, and nature of the interest of the applicant.

(c) An application must clearly state that it is for an investigation under section 7 of the Trade Agreements Extension Act of 1951. It must name or describe precisely the product concerning which investigation is being sought; specify the tariff provision which covers the product; and indicate the duty or other customs treatment which it is claimed is resulting in the importation of the product in question in such increased quantities, actual or relative, as to cause or threaten the alleged serious injury to the domestic industry.

(d) An application must include a statement of the reasons why applicant believes that the product concerning which investigation is requested is, as a result, in whole or in part, of the duty or other customs treatment reflecting a trade agreement concession, being imported into the United States in such increased quantities, either actual or relative as to cause or threaten serious injury to the domestic industry producing like or directly competitive commodities. In particular, applicant must describe the nature and extent of the injury which he considers is being caused or threatened the domestic industry by reason of the importation of the product in question.

(e) Information of the following character should also be furnished with an application, to the extent that it is readily available to the applicant, and where confidential should be submitted as indicated in Section 207.4 of this chapter:

(1) Imports, production, sales, and exports of the commodity for representative periods, including the latest available data. In greater detail, this information would include:

(i) Imports (quantity and value).

(ii) Production (quantity): (a) by the applicant, (b) by the domestic industry.

(iii) Sales (quantity and value): (a) by the applicant, (b) by the domestic industry.

(iv) Exports (quantity and value): (a) by the applicant, (b) by the domestic industry.

(2) Direct labor engaged in the domestic production of the commodity, (i) by the applicant and (ii) by the industry as a whole, indicating the number of persons employed during a normal period of operation in representative years, including the latest available data.

APPENDIX "K"--Continued

(3) Relation of the receipts of the applicant from the sales of the commodity covered by the application to his total receipts from all commodities or services produced by him, for representative years.

(4) Comparability of the domestic and the foreign article and the degree of competition between them, indicating the geographical areas or markets in which the competition is most intensive.

(5) Additional information of factual character, relating to the applicant and to the domestic industry, regarding such matters as: Profits and losses, prices; taxes; wages and other costs of production; subsidies and price-support programs; inventories, and similar data bearing on the position of the applicant and of the domestic industry in competition with the imported article.

(f) In general, statistical data supporting an application should be on an annual calendar-year basis, but should include data for months or quarters following the latest complete year; however, where seasonal and short-term factors and developments are important, quarterly or monthly data should also be furnished.

Sec. 207.4 Confidential information. All information submitted in confidence should be submitted on separate pages clearly marked "Confidential", The Commission may refuse to accept in confidence any particular information which it determines is not entitled to confidential treatment. Information called for in section 207.3 which would disclose individual business data or operations will be accorded confidential treatment by the Commission if submitted in confidence.

Sec. 207.5 Investigation; hearings--(a) Institution of investigation. After receipt by the Commission of an application under section 7 of the Trade Agreements Extension Act of 1951, properly filed, an investigation will be promptly instituted. The application, except for confidential material, will then be available for public inspection at the office of the Commission in Washington, D.C., or in the New York office of the Tariff Commission, Custom House, New York 4, N. Y., where it may be read and copied by persons interested. Notice of such investigation will be given in the manner prescribed in section 201.10 of this chapter.

(b) Public hearings. Hearings are required by law in investigations under section 7 of the Trade Agreements Extension Act of 1951 whenever the Commission finds evidence of serious injury or threat of serious injury or whenever so directed by resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives. No recommendations to the President for action under section 7 of the Trade Agreements Extension Act of 1951 may be made unless a hearing has been held. The Commission will order a public hearing whenever a hearing is required by law or in any

APPENDIX "K"--Continued

other case when in its judgment there is good and sufficient reason therefor. Public notice of hearings ordered will be given in the manner prescribed in section 201.10 of this chapter.

Sec. 207.6 Briefs. Briefs of the evidence produced at the hearings and arguments thereon may be presented to the Commission by parties interested who have entered an appearance. Unless otherwise ordered, fifteen clear copies, typewritten, duplicated, or printed, shall be filed with the Secretary of the Commission within ten days after the close of the hearing.

Sec. 207.7 Reports--(a) Findings and recommendations to the President. If, as a result of an investigation and hearing under section 7 of the Trade Agreements Extension Act of 1951, the Commission finds that an article on which a trade-agreement concession has been granted is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported in such increased quantities, actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive articles, it will report its findings to the President with appropriate recommendations for the withdrawal or modification of the concession, its suspension in whole or in part, or the establishment of import quotas, to the extent and for the time necessary to prevent or remedy such injury.

(b) Findings and conclusions in absence of recommendation to the President. If after investigation, either with or without hearing, the Commission determines that no sufficient reason exists for a recommendation to the President for action of any kind specified in paragraph (a) of this section it will make and publish a report stating its findings and conclusions.

APPENDIX "L"

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
1. Marrons	G. B. Raffeto, Inc., New York	Apr. 20, 1948	Dismissed after preliminary inquiry
2. Whiskies and spirits	U.S. Distillers Tariff Comm., Washington, D. C.	Sept. 7, 1948	Dismissed after preliminary inquiry
3. Spring clothespins	DeMeritt Co., Waterbury, Vt. (6 other producers)	Nov. 10, 1948	Investigation completed Dec. 20, 1949. No modification in concession recommended
4. Knitted berets, wholly of wool	American Basque Berets, Inc., New York	Feb. 11, 1949	Dismissed after preliminary inquiry
5. Crude petroleum and petroleum products	Independent Petroleum Ass'n., Washington, D. C.	Feb. 15, 1949	Dismissed after preliminary inquiry
6. Hops	United States Hop Growers Ass'n. San Francisco, Calif.	Mar. 28, 1949	Dismissed after preliminary inquiry
7. Reeds, wrought or manufactured from rattan or reeds, cane wrought or mfg. from rattan, cane webbing, and split or partially mfg. rattan	American Rattan & Reed Manufacturing Co., Brooklyn, N.Y.	May 20, 1949	Dismissed after preliminary inquiry
8. Narcissus bulbs	Northwest Bulb Growers Ass'n. Sumner, Washington	June 9, 1949	Dismissed after preliminary inquiry
9. Sponges	Sponge Industry Welfare Comm. (and others) Tarpon, Fla.	June 14, 1949	Dismissed after preliminary inquiry
10. Knit gloves and knit mittens, finished or unfinished, wholly or of chief value of wool. Gloves and mittends, embroidered in any manner, wholly or in chief value of wool. Gloves and mittens, knit or	Association of Knitted Glove and Mitten Manufacturers, Gloversville, N. Y.	Aug. 5, 1949	Action deferred to study further developments Nov. 22, 1949. Application withdrawn July 5, 1951

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
crocheted, finished or unfinished, wholly or in chief value of cotton			
11. Knitted berets, wholly of wool (2nd application)	American Basque Berets, Inc., New York, N. Y.	Nov. 23, 1949	Dismissed after preliminary inquiry
12. Woven fabrics in the piece, wholly of silk, bleached, printed, dyed, or colored, and valued at more than $5.50 per pound.	Textile Section of the Manufacturers Div. of the Greater Paterson Chamber of Commerce, Paterson, N. J.	Jan. 5, 1950	Dismissed after preliminary inquiry
13. Women's fur felt hats and hat bodies	Hat Institute, Inc., and United Hatters, Cap & Millinery Workers Internat'l. Union, New York	Jan. 24, 1950	Investigation completed Sept. 25, 1950. Certain concessions withdrawn by Presidential proclamation, Oct. 30, 1950
14. Stencil silk, dyed or colored	Albert Godde Bedin, Inc., New York, N. Y.	Jan. 30, 1950	Dismissed after preliminary inquiry
15. Beef and veal, fresh, chilled, or frozen	Western States Meat Packers Ass'n., San Francisco, Calif. and Washington, D. C.	Mar. 16, 1950	Dismissed after preliminary inquiry
16. Aluminum and alloys, in crude form (except scrap) Aluminum in coils, plates, bars, rods, etc.	Reynolds Metals Co., Louisville, Kentucky	Mar. 24, 1950	Dismissed after preliminary inquiry
17. Aluminum and alloys, in crude form (except scrap) Aluminum in coils, plates, bars, rods, etc.	Kaiser Aluminum & Chemical Corp. Washington, D. C.	Apr. 7, 1950	Dismissed after preliminary inquiry
18. Lead-bearing materials, lead, and lead scrap	Emergency Lead Committee, New York, N. Y.	May 11, 1950	Dismissed after preliminary inquiry

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
19. Lead-bearing materials, lead, and lead scrap	New Mexico Miners and Prospectors Ass'n. on behalf of Lead Producers of N. M. Albuquerque	May 16, 1950	Dismissed after preliminary inquiry
20. Hatters' fur, or furs not on the skin, prepared for hatters' use, including fur skins, carroted	Hatters' Fur Cutters Ass'n. of the U.S.A., New York, N. Y.	June 22, 1950	Investigation completed Nov. 9, 1951. Concession modified by Presidential proclamation Jan. 5, 1952
21. Jeweled watches and watch movements containing 7 but not more than 17 jewels, and parts therefor	Elgin National Watch Co., Elgin, Ill. Hamilton Watch Co., Lancaster, Pa.	Feb. 13, 1951	Investigation completed June 14, 1952. Modification of concession recommended to the President. Recommendation rejected by the President Aug. 14, 1952
22. Motorcycles and parts	Harley-Davidson Motor Co., Milwaukee, Wis.	May 21, 1952	Investigation completed June 16, 1952. No modification in concession recommended.
23. Blue-mold cheese	National Cheese Institute, Inc., Chicago, Ill.	June 11, 1951	Investigation completed June 12, 1952. No modification in concession recommended.
24. Screws, commonly called wood screws, of iron or steel	United States Wood Screw Service Bureau, New York, N. Y.	Aug. 15, 1951	Investigation completed Dec. 29, 1951. No modification in concession recommended
25. Spring clothespins (2nd application)	Clothespin Manufacturers of America, Washington, D.C.	Aug. 22, 1951	Investigation completed Aug. 21, 1952. No modification in concession recommended

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
26. Fresh or frozen groundfish fillets	Mass. Fisheries Ass'n. Inc., Boston, Mass. (and others)	Sept. 10, 1951	Investigation completed Sept. 4, 1952. No modification in concession recommended.
27. Garlic	Robert S. Stapleton Gilroy, Calif.	Oct. 8, 1951	Investigation completed June 6, 1952. Modification recommended to the President. Modification rejected by the President July 21, 1952.
28. Bicycles and parts	Bicycle Manufacturers Ass'n. of America, New York, N. Y. Cycle Parts and Accessories Mfg. Ass'n., New York, N. Y.	Oct. 11, 1951	Investigation completed Oct. 9, 1952. No modification recommended.
29. Cherries, candied, crystallized, or glace	Maraschino Cherry and Glace Fruit Ass'n., New York, N. Y.	Oct. 26, 1951	Investigation completed Oct. 17, 1952. No modification in concession recommended.
30. Bonito canned in oil, and tuna and bonito, canned, not in oil	California Fish Canners Ass'n., Inc., Terminal Island, Calif. (and others)	Nov. 28, 1951	Investigation completed Nov. 26, 1952. No modification in concession recommended.
31. Tobacco pipes and tobacco-pipe bowls of wood or root	American Smoking Pipe Mfg. Ass'n., New York, N. Y.	Dec. 29, 1951	Investigation completed and report sent to the President Dec. 22, 1952. The President requested more information; this supplied Aug. 19, 1953. Recommendations of Tariff Comm. rejected by President Nov. 10, 1953.

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
32. Specified household china table ware, kitchenware, and table and kitchen utensils	Vitrified China Ass'n., Inc., Washington, D. C. Nat'l. Brotherhood of Operative Potters, E. Liverpool, Ohio	Feb. 11, 1952	Investigation completed Feb. 6, 1953. No modification in concession recommended.
33. Dried Figs	California Fig Institute, Fresno, Calif.	Mar. 17, 1952	Investigation completed and concession modified by Presidential proclamation Aug. 16, 1952.
34. Screws, commonly called wood screws, of iron or steel (2nd application)	United States Wood Screw Service Bureau, New York, N.Y.	Apr. 1, 1952	Investigation completed Mar. 27, 1953. No modification in concession recommended.
35. Pregnant mares' urine, and estrogenic substances obtained or derived therefrom	National P.M.U. Producers Ass'n., Farmer City, Ill.	Apr. 8, 1952	Investigation completed April 2, 1953. No modification in concession recommended.
36. Whiting-chalk or whiting or paris white, dry, ground, or bolted	Southwark Manufacturing Co., Camden, N. J.	Apr. 10, 1952	Investigation completed April 9, 1953. No modification in concession recommended.
37. Wood-wind musical instruments and parts	Penzel, Mueller and Co., Inc., Long Island City, N. Y.	Apr. 29, 1952	Investigation completed April 28, 1953. No modification in concession recommended.
38. Cords and twines, tarred or untarred, single or plied, wholly or in whief value of manila (abaca), sisal, henequen, or other hard fiber	Cordage Institute, New York, N. Y. (and others)	July 7, 1952	Application withdrawn. Investigation discontinued Jan. 14, 1953.

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
39. Cotton carding machinery and parts	American Textile Machinery Ass'n., Whitinsville, Mass.	Aug. 12, 1952	Investigation completed July 29, 1953. No modification in concession recommended
40. Screen-printed silk scarves	Ass'n. of Textile Screen Makers, Printers, and Processors, Inc., New York,N.Y.	Apr. 14, 1952	Investigation completed and report sent to President Apr. 13, 1953. The President requested further study.
41. Rosaries, chaplets, and similar articles of religious devotion made in whole or in part of gold, silver, platinum, gold plate, silver plate or precious or imitation precious stones	G. Klein & Son, New York,N.Y. H. H. H. Co., Inc., Pawtucket, Rhode Island	Sept. 15, 1952	Investigation completed Aug. 21, 1953. No modification in concession recommended.
42. Watch bracelets and parts thereof of metal other than gold or platinum	Watch Attachment Manufacturers Ass'n., New York, N. Y.	Sept. 24, 1952	Investigation completed Aug. 20, 1953. No modification recommended.
43. Hand-blown glassware	Hand Division, American Glassware Association, New York, N. Y.	Sept. 25, 1952	Investigation completed and report to President Sept. 22, 1953. President asked for more information.
44. Mustard Seeds	Montana State Farm Bureau, Bozeman, Montana	Feb. 9, 1953	Investigation completed Dec. 10, 1953. No modification in concession recommended.

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
45. Dried figs	By request of President	Mar. 9, 1953	Review investigation completed June 3, 1953. No modification in rate.
46. Manicure and pedicure nippers, and parts Scissors and shears, and blades therefor	Shears, Scissors & Manicure Instruments Mfrs. Ass'n. Newark, N. J.	Mar. 19, 1953	Investigation completed and Commission recommendations rejected by the President May 11, 1954.
47. Groundfish fillets	Mass. Fisheries Ass'n. Boston, Mass. (and others)	May 27, 1953	Investigation instituted June 16, 1953. Commission recommendations to restrict imports rejected by the President July 2, 1954.
48. Watch movements and parts	Elgin Watch Co., Elgin, Ill. Hamilton Watch Co., and Waltham Watch Co.	Sept. 1, 1953	Investigation completed and modification of tariff proclaimed by the President July 27, 1954.
49. Lead and zinc	National Lead and Zinc Committee, Salt Lake City, Utah	Sept. 14, 1953	Investigation completed and Commission recommendation rejected by the President August 20, 1954.
50. Straight (dressmakers' or common) pins	Vail Manufacturing Company, Chicago, Ill. (and others)	Sept. 23, 1953	Investigation instituted Sept. 24, 1953. Hearing Mar. 24, 1954.
51. Safety pins	DeLong Hook and Eye Company, Philadelphia, Pa. (and others)	Sept. 28, 1953	Investigation instituted Oct. 29, 1953. Hearing March 23, 1954.

APPLICATIONS FOR INVESTIGATIONS UNDER 'ESCAPE CLAUSE' PROVISIONS--Continued

COMMODITY	NAME AND ADDRESS OF APPLICANT	DATE RECEIVED	STATUS
52. Fluorspar, acid grade	Ozark-Mahoning Company, Tulsa, Oklahoma (and others)	Oct. 20, 1953	Investigation instituted Oct. 29, 1953. Dismissed Nov. 23, 1953 at applicants' request.
53. Alsike clover seed	W. W. Thompson, Klamath Falls, Oregon (and others)	Nov. 23, 1953	Investigation completed and tariff modified by Presidential proclamation Jan. 30, 1954.
54. Spring clothespins (third application)	Clothespin Manufacturers of America, Washington, D.C.	Jan. 7, 1954	Investigation completed--Commission evenly divided. President rejected the recommendation for an absolute quota restriction Nov. 20, 1954.
55. Ground chicory	E. B. Muller & Company, Port Huron, Mich. (and others)	Jan. 19, 1954	Investigation completed Sept. 7, 1954. No recommendation by Commission to raise tariffs.
56. Screws, commonly called wood screws, of iron or steel (third application)	United States Wood Screw Service Bureau, New York, N. Y.	Jan. 29, 1954	Investigation completed Oct. 27, 1954--Commission evenly divided. President rejected recommendations of Comm.
57. Wool gloves	American Knit Handwear Association, Inc., New York, N. Y.	March 29, 1954	No modification recommended by Commission Dec. 28, 1954.
58. Glue and gelatin	The National Association of Glue Manufacturers, New York, N. Y.	April 9, 1954	No modification recommended by Commission Jan. 7, 1955.

APPENDIX "M"

DEPARTMENT OF COMMERCE
Bureau of the Census
WASHINGTON 25
September 1, 1954

Mr. Charles E. Lee
Box 227
Waukomis, Oklahoma

Dear Mr. Lee:

Your letter of August 11, addressed to the Business Economics Office of this Department, has been referred to this Bureau for reply.

The Bureau of the Census has no information in regard to production of Women's Fur Felt Hats and Hat Bodies, Women's Wool-Felt Hats and Hat Bodies, Hatters' Fur, and Dried Figs for any of the years for which you request it.

You may be interested in the figures in regard to production of Fur-Felt Hats and Hat Bodies, Wool Felt Hats and Hat Bodies and Hatters' Fur given in the enclosed report of the 1947 (latest) Census of Manufactures.

No separate data in regard to Dried Figs were published in the 1947 Census.

We are now making plans for taking a comprehensive Census of Manufactures next year to cover activities during 1954.

If we can help you in any other way, please do not hesitate to call on us.

Sincerely yours,

Maxwell R. Conklin
Chief, Industry Division
Bureau of the Census

Enclosures

VITA

CHARLES EUGENE LEE

candidate for the degree of

Master of Science

Thesis: AN ECONOMIC ANALYSIS OF THE ESCAPE CLAUSE IN RECIPROCAL TRADE AGREEMENTS

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Date of Final Examination: April 30, 1955

THESIS TITLE: AN ECONOMIC ANALYSIS OF THE ESCAPE CLAUSE IN RECIPROCAL TRADE AGREEMENTS

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The content and form have been checked and approved by the author and thesis adviser. Changes or corrections in the thesis are not made by the Graduate School Office or by any committee. The copies are sent to the bindery just as they are approved by the author and faculty adviser.

TYPIST: Mrs. Claudette Voyles