Barriers to Internal Trade in Farm Products

by E. L. Burtis and F. V. Waugh [1]

THE ERECTION of trade barriers that shut off normal commerce is not confined to European countries. Within the United States there are many such barriers, built on a mistaken theory of shutting out the competition of other communities, other States, other products. Many and devious are the methods here described to accomplish this end—oppressive restrictions on motortrucks, misuse of milk-inspection procedures, excise taxes on margarine, taxes on "outside" alcoholic beverages, dubious or nonuniform commodity "standards," illegitimate quarantine regulations. To correct these stifling restrictions, these authors argue that "what is required is a widespread and keen appreciation of the advantages and the importance of keeping our great national market open to all American producers, and a greater sense of responsibility and accountability to the Nation at large on the part of those who see some immediate gain for themselves in fencing off a corner of the national market and keeping their fellow citizens out of it."

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THE SMOOTH and efficient flow of products from the farm to consumers is constantly interrupted by the existence of a large number of laws, ordinances, regulations, and administrative decisions that set up unnecessary restrictions on interstate trade and sometimes even on intrastate trade. These restrictive measures, formerly almost unnoticed, began to multiply after 1929.

Administrative officials in the various States, through their national organizations, were among the first to recognize the seriousness of the development. As early as 1925, the United States Live Stock Sanitary Association, national organization of the State officials in charge of animal quarantine regulations, had set up a committee on unification of laws and regulations. At its annual meeting in 1937 the National Association of Marketing Officials devoted a full day to a consideration of internal trade barriers. In November 1938 the National Association of Secretaries, Commissioners, and Directors of Agriculture passed a resolution condemning attempts to discriminate against the products of other States. At a regional conference of the Council of State Governments, held the same month, internal trade barriers were the chief subject of discussion.

A few examples of trade barriers are described in this article. A recent report made by the Bureau of Agricultural Economics and sponsored by the National Association of Secretaries, Commissioners, and Directors of Agriculture [2] cites many examples. When the whole picture is drawn in, it becomes evident that a kind of unpremeditated, partial economic warfare exists among the States of the Union.

This is a development which the Federal Constitution was specifically designed to prevent. Article 1, section 8, gives to the National Congress the power "to regulate commerce * * * among the several States"; and article 1, section 10, provides that "no State shall, without the consent of Congress, lay any duties on exports or imports except what may be absolutely necessary for its inspection laws."

As the Supreme Court said in 1824, in the case of *Gibbons* v. *Ogden*: "If there was any one object riding over every other in the adoption of the Constitution, it was to keep commercial intercourse among the States free from all invidious and partial restraints." And, indeed, one of the main purposes in calling the Constitutional Convention had been to provide an opportunity to consider ways and means of halting the commercial wars raging between some of the Colonies.

One of these wars had been between New York and neighboring States. New York had levied high harbor entrance fees on small ships from New Jersey and Connecticut with the purpose of discouraging New Jersey and Connecticut farmers from shipping their firewood, dairy products, and garden vegetables to New York City for sale and thereby taking money out of New York State. In retaliation, New Jersey had levied a real estate tax of $1,800 a year on a small plot of ground at Sandy Hook where New York had erected a lighthouse to aid shipping in New York Harbor. In Connecticut, the merchants of New London had pledged themselves to boycott all

[2] TAYLOR, GEORGE R., BURTIS, EDGAR L., and WAUGH, FREDERICK V. BARRIERS TO INTERNAL TRADE IN FARM PRODUCTS. U. S. Dept. Agr., Bur. Agr. Econ., Spec. Rpt., 104 pp., illus. 1939.

New York goods. By 1786 almost all of the States of the northern half of the Confederation had levied import duties on each other's products, duties so high as to be protective measures. In the same year the Massachusetts Legislature had passed an act totally prohibiting the importation of some 58 articles.

A contemporary leader speaking before the Massachusetts Legislature [3] to urge ratification of the Constitution described the existing situation as follows:

> As to commerce, it is well known that the different States now pursue different systems of duties with regard to each other. By this and for want of general laws of prohibition through the Union we have not secured even our own domestic traffic that passes from State to State.

The adoption of the Constitution by the Colonies did, in large measure, "secure domestic traffic." As the United States expanded in area and grew in population during the following decades, it became one of the largest and most populous free-trade areas in the world. When all parts of the country were bound together with a network of rails in the latter half of the nineteenth century, producers of many commodities and articles found that they could reach a large part of the population of the Nation at prices the people could afford to pay. This mass market has made possible the phenomenal development of mass production in industry, mass distribution in merchandising, and specialized areas of production in agriculture.

Without an enormous market, easily and freely accessible, the great intensely specialized citrus-growing areas of California, Florida, and Texas--to mention a single example--could not have developed, and consumers in northern cities would not enjoy such ample supplies of oranges and grapefruit at such low prices. Even potatoes, which are raised almost everywhere, are heavily concentrated in about a dozen areas, such as Aroostook County, Maine, Long Island, N. Y., and the Eastern Shore of Virginia. Without a wide national market the Corn Belt, the Wheat Belt, the Cotton Belt, and the great cattle ranges of the West would not have developed, although a readily available foreign market also contributed to their growth. It is apparent how closely both the prosperity of American agriculture and the well-being of our great city populations are bound up with the maintenance of the Nation-wide market that is made possible by free internal trade.

MOTIVES FOR RESTRICTIONS

Why, then, have restrictions on trade been imposed—restrictions so numerous and severe that they seriously threaten free trade within the United States?

An urge to protect local industries and local producers is always present. The ills at home are easily seen and keenly felt, while those farther away are harder to appreciate. It is a natural thing, therefore, to try to aid home industries even if the action taken is detrimental to others. When the depression set in, this perennial tendency was powerfully reinforced by the acute distress of many groups of agricultural producers. American agriculture had already felt the pinch of narrowing foreign markets, and when purchasing power

[3] Dawes, in the Independent Chronicle and Universal Advertiser, Boston, January 31, 1788.

slacked off so rapidly at home, farmers were under great impulsion to hold as much as possible of what was left of their markets and to protect themselves against encroachments by their competitors. Farmers appealed to their legislatures and to their State and local officials, and many protective laws and regulations resulted.

At about the same time, the motortruck and the merchant trucker became major factors in the transportation and marketing of farm products. They upset old patterns of marketing; and although often offering higher prices to some farmers than other agencies of transportation and marketing, they exposed other farmers to unwonted competition, perhaps bringing competing products into areas not so well or so cheaply served by rail. Merchant truckers, in particular, often "went around" established middlemen at both the country and the city ends of their hauls. This situation added to the incentive of some farmers and middlemen to protect themselves against competition.

It must be recognized, nevertheless, that the protectionist motive is not the only factor that has been responsible for the erection of trade barriers. Contributing factors have been the reluctance of States to forego sources of revenue and a simple lack of coordination among States in their efforts to regulate, resulting in nonuniformity of requirements from State to State.

In much of the legislation designed to protect in-State producers, the constitutional provision giving Congress the power to regulate interstate commerce has been circumvented by disguising restrictions upon interstate trade as revenue measures, measures for the protection of public health or safety, or measures for the prevention of the spread of plant and animal diseases. Also, in some fields Congress has not exercised its constitutional power to regulate interstate commerce. In the absence of regulation by Congress, the courts have ruled that the several States may (within limits) exercise control over interstate commerce.

DISADVANTAGES OF EXCLUSION COUNTERACT BENEFITS

Most trade barriers have been promoted by local groups of producers with the motive of keeping as much of the local markets as possible for themselves by preventing or hindering the sale of competing products produced in other States. This policy may, of course, raise prices at least temporarily in the local markets and give the local producer a kind of monopoly advantage. Nevertheless, agricultural producers are harmed in two ways by these market-exclusion practices. (1) Although they may be able to get some measure of protection on their local markets, they are harmed by similar measures in outside markets to which they might want to ship their surpluses. (2) The monopolistic advantages gained by market exclusion are likely to be short-lived.

When a local group of dairymen succeeds in establishing unnecessarily high and complex inspection requirements on milk, they not only shut out some of the supply which might compete with them, but they also raise their own costs of production. Moreover, by excluding outside milk and cream they add to the national surplus of cream and butter, which tends to demoralize the butter market.

Since the prices of dairy products all tend to be based on butter prices, this situation is not a healthy one for the dairy industry.

Let us take another example—that of a dairy State which imposes a prohibitive tax on margarine. This is intended, of course, to benefit the local dairymen. Yet it is a question whether Wisconsin dairymen have been benefited or hurt by the margarine tax of 15 cents a pound in that State. It is true that the tax has been almost completely effective in stopping the sale of margarine in the State of Wisconsin. This probably means that a little more butter is sold in that State; but the price of butter in Wisconsin, of course, is determined by what the national market will pay for it. Probably the margarine tax has had no significant effect on butter prices. Moreover, the tax in that State has led to a great deal of resentment in the South, and although there has not yet been any official boycott of Wisconsin products, it is quite apparent that the present situation does not help Wisconsin producers to find markets in the South. Many more examples could be given, but perhaps these are typical.

When exclusion of outside products leads to retaliation, the local producer is more likely to be harmed than helped. It is clear that in the long run agriculture would be better off with free and open markets throughout the country.

TYPES OF RESTRICTIONS

What are the restrictions and regulations that most seriously hamper trade in farm products? They are most numerous and most serious in the following fields: (1) Regulation of motortrucks and merchant truckers, (2) regulation of the marketing of dairy products, (3) margarine taxes and regulations, (4) taxation on and regulation of the sale of alcoholic beverages, (5) grading, labeling, and standardization measures, and (6) plant and animal quarantines.

Regulation of Motortrucks and Merchant Truckers

Some States, among them Massachusetts, New York, California, and Ohio, permit motortrucks owned by nonresidents to enter the State without payment of any fees so long as they do not engage in intrastate business within the State, this arrangement usually being contingent upon reciprocity of treatment. Such freedom of interstate movement, however, is not typical of the country as a whole. There are a few States that will not allow an out-of-State motortruck to come in even for a single or occasional trip without purchasing a State license tag or without paying a ton-mileage tax higher than that charged in-State trucks. Most States place similar but less extreme restrictions on out-of-State trucks. It is plain that requirements like these must necessarily discourage interstate movement by motortruck.

Another serious impediment to interstate movement of goods by truck is the great variation among the States in requirements as to the width, length, and weight of trucks and as to the safety appliances they must carry. Two examples might be cited. Kentucky and Tennessee allow a maximum gross weight of only 18,000 pounds, and Kentucky will not permit a motortruck to use the roads if it exceeds 30 feet in length. These limits prevent any but the lightest trucks

from crossing two States which stretch from the Mississippi River to the crests of the Alleghenies, and hence constitute a serious barrier to transportation by trucks between States north of the Ohio River and States to the south. A South Carolina law that was enacted in 1933, but was never enforced and was repealed in 1938, would have limited the width of motortrucks to 90 inches, 6 inches less than the standard width, and their gross weight to 20,000 pounds. This law would have set up a very serious barrier to the movement of citrus and other produce north from Florida, and out of North Carolina southward. Together with the Tennessee and Kentucky laws, it would have stretched a barrier from the Mississippi River to the Atlantic Ocean interfering with north-south truck movement.

The merchant trucker—the trucker who buys goods in one locality, carries them to another, and there sells them—is especially likely to be affected by the requirement of having to purchase a license plate for his truck even for occasional visits to a State. In many States he is also required to take out a license to do business as a merchant trucker. The fee charged for such a license ranges from $10 annually in Iowa, for a light truck, to $100 annually in Montana and $300 annually in each county in Idaho and Washington in which the trucker wishes to do business.

High fees charged merchant truckers are not in themselves restrictive to interstate trade, except in cases where a trucker might wish to do business in two States having them. However, most legislation of this kind, by exempting from its scope farmers carrying produce grown on their own farms, has the effect of favoring producers close to a consuming market at the expense of those located farther away. This is true because only farmers close to the market, say within 20 or 30 miles, can economically haul their own produce to market. Those farther away must get someone to do the hauling and merchandising for them.

In passing, it may be noted that railroad freight rates have a profound effect on the movement of goods. Differences exist in the level and structure of rates in different parts of the country, and these differences have been the cause of many controversies. For example, the rates that apply in the southern territory (the Southern States lying east of the Mississippi River) are materially higher, generally speaking, than those in the eastern or "official" territory (the Northern States east of the Mississippi River). An intermediate level of rates has been established for shipments between the two regions. Therefore, it is typically more expensive to ship from one point to another in southern territory than to ship an equal distance from a point in eastern territory to one in southern territory, and more expensive to ship from a point in southern territory to a point in eastern territory than to ship the same distance between two points in eastern territory. Whether this or any other specific set-up of rates can properly be regarded as a trade barrier, unfairly hindering the movement of goods into or out of a particular area, is a question that can be answered only after general agreement has been reached as to what are correct economic principles in the setting of transportation rates. Any conceivable set of rates must necessarily be unfavorable in comparison with some other set of rates to some groups of producers.

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A set of principles of rate making, generally agreed upon, is indispensable to the impartial appraisal of a rate situation.

Regulation of the Marketing of Dairy Products

The importance of a safe milk supply is well known and unquestioned. To insure that it will be safe most towns and cities, and in some cases the State authorities, inspect the farms where the milk is produced. The usual procedure is to permit only milk from farms that have been inspected and approved to enter the city or town or the State, as the case may be.

There can be no question of the necessity of making sure that milk is germ-free and healthful. But by refusing to inspect the farms of all producers who desire inspection, or by charging a high fee for such inspection, the authorities in charge of inspection can exclude healthful milk. For example, Haverhill, Mass., will not accept milk shipped in from a distance of more than 40 miles. Walpole, Mass., places the limit at 30 miles, and North Attleboro at 8. Similarly, New York City will not send inspectors west of Pennsylvania. While it probably would not be profitable to ship milk from Ohio to New York City, western cream is kept out of the New York City market by this action.

There is a real opportunity to remove the barriers to interstate trade in milk and cream and other dairy products by devising a system under which each State and each municipality will accept inspection by accredited inspectors located in other States.

Margarine Taxes

Prior to 1929 several unsuccessful attempts had been made by dairy States to discourage the consumption of margarine. In the years from 1885 to 1897, five States had enacted laws requiring margarine to be colored pink. These laws had become inoperative, however, when the United States Supreme Court declared the New Hampshire law void. In the 1920's three States had passed legislation prohibiting the sale of butter substitutes in which milk or cream had been combined with edible oils. (Some milk or cream is necessary if the substitute is to be palatable.) But these laws had been defeated by popular referendum in two of the States, and in the third the State supreme court had granted a permanent injunction against enforcement of the law.

Then in 1929, Utah placed an excise tax on margarine. In 1931 10 other States followed suit, and by 1939 half the States in the Union were taxing the sale of margarine. These taxes have been upheld by the Supreme Court of the United States as legitimate revenue measures. Three States now impose a tax of 15 cents a pound; 1, a tax of 12 cents; 17, a tax of 10 cents; and 3, a tax of 5 cents.

There are no statistics of the consumption of margarine by States, but a rough indication of the effect of the margarine taxes on consumption is given by a comparison of the figures on the number of retailers federally licensed to sell uncolored margarine in 1929 with the same figures for 1935. If the figures for the States taxing uncolored margarine are examined, it will be found that in those levying a tax of 5 cents a pound the number of retailers licensed to sell uncolored

margarine dropped 52 percent between 1929 and 1935; in those with a tax of 10 cents a pound, 91 percent; and in those with a tax of 15 cents a pound, 99 percent. In comparison, there was a 10-percent increase in the States that have no excise taxes on uncolored margarine.

In the face of these figures, it is hard to doubt that the excise taxes on margarine effectively discourage consumption.

Probably no other measure that limits interstate trade has aroused so much resentment and active opposition as margarine taxes. Cottonseed oil is an important ingredient in the manufacture of margarine, and cottonseed is an important source of cash income to southern farmers. Cotton farmers regard margarine taxes as an attack on their legitimate markets. They have threatened to impose retaliatory taxes on Wisconsin dairy products and other Wisconsin products. For example, the last session of the Arkansas Legislature considered a bill that would have imposed a 25-percent sales tax on milk, cream, butter, and apples grown in Wisconsin and three other States that have margarine taxes.

Perhaps the worst danger in margarine taxes is the possibility that their example will spread to other commodities. Having granted protection against outside competition to one industry, a State may soon find itself under considerable pressure to grant similar favors to other industries. If excise taxes may be used against margarine, why not also against other commodities that compete with State industries?

Here, indeed, would be a revival of the interstate tariffs that the framers of the Constitution were so anxious to eliminate from our national life.

Regulation of the Sale of Alcoholic Beverages

Commerce between the States in alcoholic beverages is not subject to regulation by Congress. "Since the Twenty-First Amendment," said the Supreme Court in a decision handed down early in 1939, "the right of a State to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause."

Many States have moved quickly to turn this exemption to the advantage of their own brewing and distilling industries. Some have imposed heavier license fees on wholesalers or retailers who sell alcoholic beverages produced outside the State than on those who sell only home liquors. Some have imposed special sales taxes or "inspection fees" on out-of-State liquor, in addition to those imposed on liquor produced in the home State.

Agriculture has been directly affected by efforts of several States, in their regulation or taxation of the sale of liquor, to give their own farmers an advantage over other farmers. For example, Arkansas, Georgia, Michigan, and New Mexico place a higher sales tax on out-of-State than on domestic wines. Maine taxes materials produced outside the State but used by State wineries. North Carolina limits the sale of wine to the native product. Iowa, Minnesota, and Wisconsin require beer to be made from 66⅔ percent or more of barley malt. Presumably the purpose is to discourage the use of substitutes for barley, particularly brewers' rice.

Grading, Labeling, and Standardization Measures

Nonuniformity of specifications and requirements forms perhaps the most serious hindrance to interstate trade, as far as State grading and labeling laws and State standards are concerned. Hardly less serious, however, is the deliberate choice of specifications and requirements designed to place out-of-State products at a disadvantage when sold in competition with home-State products.

Nonuniformity among the States in grades, standards, or labeling requirements does not hamper interstate trade as long as they are not made compulsory. But nonuniform compulsory State requirements obviously are a potential source of countless annoyances and hindrances.

For example, one Western State has promulgated compulsory grades for fruits and vegetables which are based on United States grades but differ in some particulars. This State refuses to accept certificates of inspection issued by the Federal-State inspection service and insists on making its own inspection of all fruits and vegetables coming into the State by truck, charging a fee for the inspection. Another Western State does the same thing, except that it does not charge an inspection fee. Many shipments of apples arriving from Washington by truck have had to be regraded and repacked at the California border because the Washington and California grades are not uniform.

A ludicrous but unhappy situation was created when Oregon made its berry-box standards compulsory for shipments out of the State, and California declared such boxes illegal within its borders.

Two examples will show how specifications or requirements may be chosen with an intent to place out-of-State produce at a disadvantage. Formerly some of the Southeastern States required eggs to be classified as "Cold Storage," "Shipped," or "Fresh." Cold storage eggs were those that had been in cold storage; shipped eggs, those that had not been in cold storage but had been shipped in from outside the State; and fresh eggs, those produced in the home State that had not been in cold storage and that were not "partially or wholly decomposed." Labeling so patently misleading could hardly fail to defeat its own purpose, but the purpose was plain: to prejudice consumers against out-of-State eggs.

In Rhode Island the specifications are so drawn that eggs produced in other States cannot qualify for the topmost grade. There are three grades of eggs in Rhode Island: "Rhode Island Specials," "Fresh eggs," and just eggs. Only eggs meeting the strictest quality tests can qualify as Rhode Island Specials. But this is not enough. They also must have been produced in Rhode Island. No out-of-State egg, no matter how fresh, can be a Rhode Island Special. It is true that the State regulations do not prohibit the sale of eggs graded in accordance with the Federal grades, under which eggs of the same quality as Rhode Island Specials but laid outside the State could be sold as U. S. Specials. But Federal egg grades are not in common use in Rhode Island. Rather, the State bureau of markets actively promotes the Rhode Island grading system.

Nonuniformity is an ill that can be solved by consultation and cooperation among the States. Failing this, Congress can exercise its power to regulate commerce between the States by providing

for Federal grades to be used in interstate commerce in fruits and vegetables and other farm products not now covered by such legislation.

Plant and Animal Quarantines

Agricultural quarantines are indispensable to American agriculture. They have proved themselves again and again an effective means of preventing the spread of pests and diseases, and in many cases they have been a necessary part of successful efforts to completely eliminate pests and diseases from the United States.

Quarantines used for these purposes are legitimate and desirable, but there are a few quarantines that appear to be used for economic reasons—to protect in-State producers against competition—rather than to prevent the spread of a disease or pest.

Nonuniformity is another defect in some State quarantine regulations that tends to hamper interstate trade. Nonuniformity was perhaps to be expected when the States first undertook to protect themselves against threats of new pests and diseases. However, it is too serious a handicap to internal trade to be allowed to continue when uniform regulations can be just as effective, if not more so, in preventing the spread of pests and diseases.

A good beginning has already been made by the four Regional Plant Boards and the National Plant Board toward removing the defects present in some of the State quarantine regulations. These boards, consisting of State enforcement officials, meet periodically to review the regulations in force in the States represented. After a discussion of the factors involved, both from the point of view of the State imposing a regulation and from that of the other States affected, the boards often go on record as approving the regulation, recommending that it be rescinded, or recommending that it be amended in a certain way. The recommendations of the boards are nearly always followed, and as a result a great deal of progress has already been made toward achieving more uniformity among the State regulations and toward eliminating measures that are not well justified as means of controlling pests and diseases.

POSSIBILITIES FOR REMOVAL OF BARRIERS

How can the barriers to internal trade be removed? In the foregoing discussion a few suggestions have been made with respect to particular fields. In general, there seem to be three possible means: (1) Action by the courts, (2) action by the States, and (3) action by the Federal Government.

Not all of the legislation under which barriers to internal trade have been established has been reviewed by the courts. It may be expected that some of it will be found unconstitutional. But much restrictive legislation has already been reviewed by the Supreme Court, and some of it has been approved. Some of the margarine excise taxes have run the gauntlet of the courts, even taxes so high that they produce virtually no revenue. The Court has ruled that the States are not bound by the commerce clause in regulating and taxing alcoholic beverages. The Court is not always guided by the economic effects of a measure in deciding whether or not in law it is an interference

with the powers of Congress to regulate commerce between the States.

In brief, it is too much to expect that the Constitution will work automatically—that as soon as an unwise law, detrimental to interstate commerce, is passed, the courts will declare it void. What is required is a widespread and keen appreciation of the advantages and the importance of keeping our great national market open to all American producers and a greater sense of responsibility and accountability to the Nation at large on the part of those who see some immediate gain for themselves in fencing off a corner of the national market and keeping their fellow citizens out of it. We can hardly hope to keep our Federal system intact unless the various producer interests in each State accept the responsibility that is theirs not to urge upon their legislatures laws that are injurious to the Nation as a whole or in contravention of the principles which have made it great, merely in order to snatch some quick and probably temporary advantage over competing producers in other States.

The chief responsibility for keeping internal trade in the United States free rests primarily, then, not on the courts but on the legislatures and administrative officials as representatives of the people.

There is room for considerable difference of opinion as to whether the Federal Government or the State governments should take the lead in getting rid of our present interstate trade barriers. But it would seem to be common sense that the problem is one needing cooperative action by both. There are some barriers, such as margarine taxes, that the States alone have the power to attack. Then there are some barriers that arise out of the difficulty that 48 different governments are bound to have in keeping together on a coordinated program. Problems of nonuniformity are of this nature, and it may be that some Federal legislation may be needed to assist in the solution of problems of this kind. Action by the Federal Government, however, should be taken as part of a general program in which the States are collaborating. Many problems of nonuniformity can be solved by closer consultation and collaboration among State enforcement officials. The example of the Regional and National Plant Boards, whose activities are described above, would seem to be an excellent one to copy in other fields.

Many organizations of State officials have concerned themselves with internal trade barriers and are anxious to help remove them. The National Association of Directors, Secretaries, and Commissioners of Agriculture, the National Association of Marketing Officials, and the Governors' Conference have all gone on record as being opposed to trade barriers. The Council of State Governments, which officially represents 44 States, is holding a series of important conferences to consider the problem. With such full support of the States and with whatever assistance the Federal Government can render, the attack on internal trade barriers may confidently be expected to succeed.