10c

PUBLIC AFFAIRS PAMPHLETS

# STATE TRADE WALLS

BY F. EUGENE MELDER

WHAT ARE THE FACTS?

Do any states impose tariffs?

What restrictions are imposed against trucks moving from state to state?

Why an "excise tax" on margerine?

Who pays for trade walls? Who is helped?

PUBLIC AFFAIRS PAMPHLETS
No. 37 1939

Digitized by Google

Digitized by Google

# STATE TRADE WALLS

By F. EUGENE MELDER

**Assistant Professor of Economics**
**Clark University**

DURING the past century America has developed the greatest free market in the world. Within it there is a high degree of specialization. New England textiles and shoes are used in all parts of the country. The Mississippi Valley serves as the granary of the nation. The Pacific Northwest is our chief source of lumber. Pennsylvania is the nation's largest steel producer. Each section contributes one or more specialties to the national income. As a result we have produced more in proportion to our population than any country in the world. The existence of a wide national market, an efficient industry and transportation system, abundant and diverse resources, an intelligent population, and regional specialization has made possible the American standard of living. Americans have been the envy of most of the European peoples. America has been the land of promise—an economic Utopia.

In recent years many state and local laws have been en-

Professor Melder is a leading authority on interstate trade restrictions. His book, *State and Local Barriers to Interstate Commerce*, University of Maine Press, is one of the pioneer studies in this field.

Copyright, 1939, by the Public Affairs Committee, Incorporated
—A nonprofit, educational organization—

Digitized by Google

acted which tend to prevent goods and services from moving freely between the various states and communities of the country. These trade barriers closely parallel the trade walls which have been erected by the nations of the world, both in spirit and method. Most of the lawmakers of the nations are honestly seeking to improve economic conditions at home by cutting off the sale of foreign goods while simultaneously seeking to help the home producers capture larger markets abroad. They were seeking a way out of the depression in which the world was caught in 1929. Unemployment was increasing rapidly, bringing with it unprecedented problems of public relief. The burden of relief greatly added to the cost of government at the very time that many persons were having great difficulty meeting their taxes.

Faced with a sharp decline in revenues, the states found themselves in a serious plight financially. Some of the legislators noted that much of the money in the state was spent for goods brought from other parts of the country. It seemed to them that if it were possible to cut down purchases from "outsiders," there would be a greater demand for the things produced within the state. By 1931, local campaigns of "Buy Illinois," "Buy Seattle," and "Buy From Your Local Retailer," or your "Neighborhood Store," were under way. The movement was beginning to be reflected in law, also.

## The Constitution Prohibits

The United States Constitution does not permit states to levy tariff duties on imports or exports, or to discriminate against the commerce, ships, and citizens of other states. Consequently, no state could raise outright tariff barriers against the trade entering the state from sister states. But there are many ways in which the trade can be crippled. So the states found ways to discourage the sale of out-of-state goods within their borders by measures other than tariff duties.

Digitized by Google

Digitized by Google

## The States Buy at Home

Although the Constitution deprives the states of tariff-making power, it does not say that they must spend their money without choice between residents and outsiders. So the state government itself can be quite "choosey" if it wishes, and spend everything on "homemade" products. And that is often what it "chooses" to do, under the pressure of groups of its citizens who expect to be specially favored.

For many years it has been common for some states to require that only legal residents should be on their payrolls. By "legal residents" is meant those persons who have maintained their homes within the state for a period varying from six months to five years, depending upon the state. Many states also require public printing contracts to be awarded only to resident printing firms. Twenty-six states have such a policy.

This idea of guarding residents against outside competition by specifying how state funds are to be spent has been extended in recent years to other groups. Twenty-eight states show a preference for homemade products when buying supplies for public institutions or building materials for public works. There are many kinds of such laws. For instance, six states insist on coal mined within the state. Seven states require building stone and other materials produced within the state to be used in the construction and repair of public buildings, whenever such are obtainable. Three others have similar preferences, but limit them to domestic producers whose prices are not more than 5 per cent above the prices of outsiders. A fourth sets the limit at 3 per cent. Some states give an edge to local contractors in awarding contracts for the construction of public buildings and other public works. One state even requires that textbooks for the public schools shall be printed within the state. Another requires that homemade butter be served in its state hospitals and penal institutions. In all, forty-seven states have a law of this kind. In so far as higher prices are paid for homemade products, such

Digitized by Google

practices add to the cost of state government, at the expense of the taxpayers of that state. Moreover, they cut sales outside the state because, as in international trade, a group must permit outsiders to sell their goods inside if it is to sell outside. Trade is *trade*. You can't sell unless you buy.

The proprietary powers of the states are used at times to restrict or stop exports of natural resources. Acting in its authority as proprietor of the rivers and flowing streams, the State of Maine has successfully prohibited the export of hydroelectric power, in order to force factories using power to move into the state and thus build up the state's manufactures. Several other states have laws restricting but not wholly forbidding the export of power.

## Other Ways of Skinning the Cat

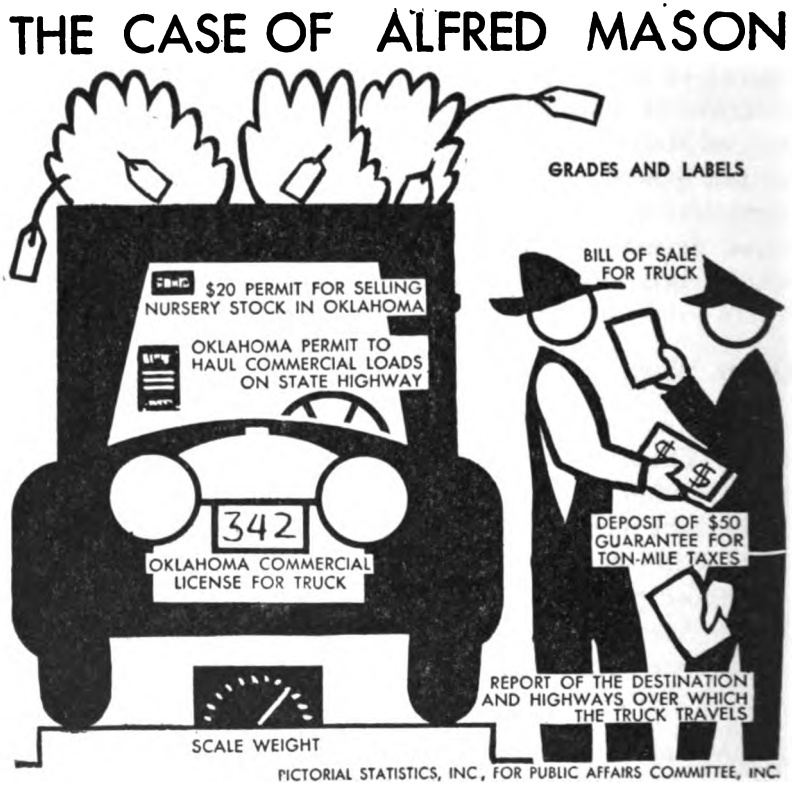
It is proverbial that "there is more than one way to skin a cat." The states have found that there is more than one way to get around a constitutional prohibition against state tariffs. They have made use of various governmental powers to hamper imports from sister states. These include the use of the police power, or the power of the state to protect the health, morals, and safety of the public, and the taxing power, or the state's power to raise revenue.

## Mr. Mason Goes to Oklahoma

Let us take, for example, the case of Alfred T. Mason. Mr. Mason (not his real name, of course,) operates a nursery business in Herlin, Texas, about ten miles from the Red River. The Red River is the boundary between Oklahoma and Texas at this point. Most of Mason's business is in roses, but he grows other nursery stock and even buys some from other nurseries for resale. Until recently about half of his business was done in Oklahoma, due to the fact, probably, that there isn't an Oklahoma nursery within fifty miles of Herlin. Recently Oklahoma has enforced two types of legal

Digitized by Google

measures which affect Mason's business. The first is a combined police and tax measure for the regulation and taxation of trucks using the Oklahoma highways. The second is a




nursery stock grading law to protect consumers from fraud. The first of these laws operates as follows:

Until 1939 if a truck crossed the Red River, it was stopped at a little watchhouse, known as a port-of-entry. The driver had to produce an Oklahoma commercial license for the truck or purchase one. He had to show a bill of sale for the truck, the scale weight, and an Oklahoma charter or permit to haul commercial loads on the state highways. Then

Digitized by Google

he had to put up a $50 deposit, as a guarantee that he would pay his ton-mile taxes for use of the highways, and report his destination and the highways over which he expected to travel. On his return trip he was refunded his deposit, minus his ton-mile tax of one-half cent per mile for the mileage traveled in Oklahoma. But these were merely preliminaries to get his truck into the state.

He then was confronted with the problem of getting his load of rosebushes and nursery stock into Oklahoma. For a fee of $5 a year Mason Nurseries are entitled to sell nursery stock in Oklahoma, provided they grow all the plants they sell. Since Mason buys some of his plants for resale, he has to have a different kind of a permit. This costs him $20 a year. However, this permit entitled the firm to sell only in Oklahoma. Another law requires that all goods carried on the truck must have been ordered before it enters Oklahoma. In other words, sales of goods from the truck are prohibited. Also the nursery stock must be free from plant diseases and insects—a requirement common to most states in order to keep out plant pests of various kinds. But the rose quarantine law also requires a certificate showing that all roses shipped into the state have been graded and labeled as to color and variety. The law is not clear whether or not such labels help keep out plant pests. But there can be no question that, combined with other measures, it prevented nursery stock from moving freely between Texas and Oklahoma. The regulations proved so costly and such a nuisance that Mr. Mason stopped sending his trucks into Oklahoma.

## Ports-of-Entry

This example showed us, incidentally, two "other ways of skinning the cat," one through the erection of barriers to interstate trucking, and the other through the misuse of quarantine powers so as to keep out healthy as well as infected nursery stock. Ports-of-entry are found in some ten states, pri-

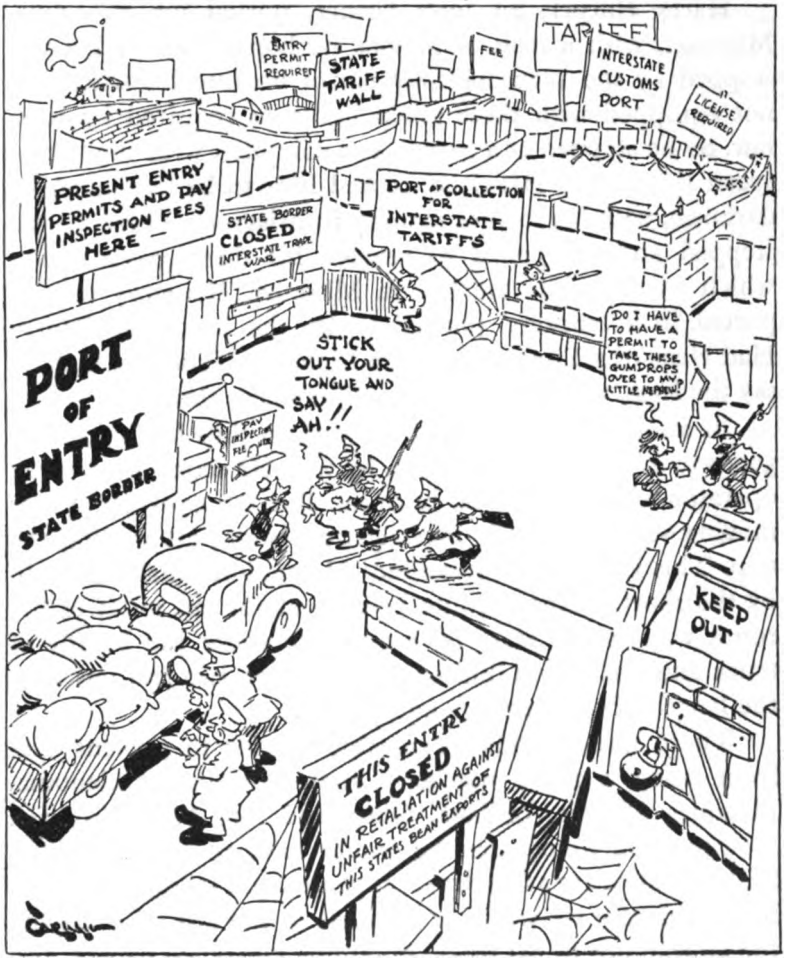
Digitized by Google

marily for the purpose of collecting ton-mile taxes on interstate trucks, enforcing compulsory insurance and safety laws, and checking the dimensions and weights of incoming motor carriers to assure compliance with size and weight requirements. Sometimes they are also used to enforce plant and sanitary regulations, and to collect taxes on gasoline carried in the fuel tanks of cars and trucks about to enter the state. The "ports" are particularly spectacular because of their similarity to the customs offices commonly found at international boundaries. Although not serious in themselves as barriers to interstate trade, they provide a means for enforcing all kinds of restrictions, good and bad.

## Quarantine Laws

All states have quarantine laws as a protection against insects and plant diseases. These serve a useful purpose. But they are often used unjustly to bar healthy products from other states. In the case told about above, two quarantine and inspection regulations worked against the outside nursery stock in the state. These regulations seem to have no relation to diseases on plants. They are simply taxes for the privilege of selling shrubs in Oklahoma. The other feature of the Oklahoma law which hampers the outsider is the requirement that all roses shipped into the state must be graded and labeled as to color and variety. This is for the purpose of protecting Oklahoma buyers against having their orders filled by wrong varieties or grades and has nothing to do with keeping insect pests and diseases out of the state. Twenty-one states collect annual fees from outside nurserymen, and many impose other restrictions on them, restrictions which are useless in dealing with plant disease and insect pests. Such requirements as the filing of surety bonds, permit tags attached to each interstate shipment, and the filing of special invoices with state officials before making shipments are among these restrictions.

Digitized by Google




Courtesy The Des Moines *Register*
(Copyright, 1939, New York Tribune, Inc.)

## Wanted—Hurdle-Jumping Trucks

The trucker of nursery stock is not alone in his troubles with ports-of-entry and nursery stock grading and quarantine laws. His brothers carrying other products likewise find state lines extremely serious barriers to their operations.

Digitized by Google

Harry Harper, an Iowa farmer, started for St. Louis, Missouri, with a load of melons he hoped to sell. He was stopped by the Iowa highway patrol because his truck was not equipped with three green lights, as required by Iowa law. So he stopped at a garage and complied with the "three green light law." His delay caused him to be overtaken by darkness, with his load of melons, in Missouri. There he was stopped and compelled to remove his three green lights, which were against the law in Missouri. His story was reported in a truckers' journal under the headline, "Harry Had Heck of a Time with Green Lights on Truck," which, to say the least, was describing his experiences clearly.

In another case, a Texan wanted to ship his household goods to a West Virginia town, by van. He soon found a van operator who wanted the business. But the operator of the moving van did a little investigation before attempting the trip. This is what he discovered: He couldn't make the trip by the short southern route because about ten miles of the route was in the State of Kentucky, where the length of truck and trailer was limited to thirty feet, two feet less than the length of the trucker's equipment.

There was no such immovable barrier to prevent him from using a more northerly route, through Oklahoma, Missouri, Illinois, Indiana, Ohio, and into West Virginia. However, he found that he would have to spend at least $1,000 in attorney's fees, travel expenses, and taxes, and would have to devote six weeks of his time to the task of changing the appearance of his truck, obtaining clearance papers, and so on, in order to comply with the laws of those states. He learned he would have to file tariffs, financial statements, and applications in seemingly endless numbers. He would also have to pay a wide range of taxes in various states. Also he would have to paint lettering on the side of his truck—of a special size of type—to comply with the laws of one state, and in the next state he would have to do some more painting to display another kind of information. Before he finished his figuring he found that he could buy a new passenger car

Digitized by Google

and make a trip from Texas to West Virginia and return for less money than it would cost him to comply with the various state requirements for a one-way trip in his truck with a load of household goods.

He didn't make the trip.

These are illustrations of only one particular type of difficulty encountered by interstate shippers, namely the lack of uniformity of state motor vehicle laws. Because the states pay most of the bills for constructing and maintaining highways, they feel free to say how these roads shall be used. The result is legislation which can be warped to protect home industry and other transportation agencies from the competition of out-of-state producers and truckers.

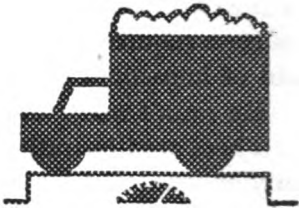
## Conflicting Laws

Conflicting requirements are so common that several legal volumes would be needed to print all the contradictory laws. Often several state motor vehicle commissioners have got together around the conference table to iron out differences between motor vehicle codes of adjoining states, but a serious non-uniformity continues in the dimension requirements as to maximum heights, widths, loads per tire, and overall gross weights. The accompanying chart shows the lack of uniformity of the maximum weights permitted for truck and trailer combinations for thirty-eight states and the District of Columbia. States not shown on this chart have variable gross weight limits worked out according to complicated formulas which take into consideration such things as tire size and wheel base of trucks. Texas permits maximum net loads of 7,000 pounds, except if a truck is en route to the nearest railroad station, whereupon the maximum doubles to become 14,000 pounds. This law is an effective barrier to interstate hauling in competition with railroads.

Even though an interstate truck operator is treated the same as home truckers, he has to comply with such a variety

Digitized by Google

# MAXIMUM LEGAL WEIGHTS OF LOADED MOTOR TRUCKS



KENTUCKY

TENNESSEE

ALABAMA, MISS., SOUTH DAKOTA

N. DAK., VIRGINIA

CONN., FLORIDA, IND., ME., N. C., S. C., MASS., VERMONT, N. H.

OKLAHOMA

NEBRASKA, WYOMING

OREGON

ARKANSAS, MISSOURI

NEW JERSEY

GEORGIA, DELAWARE, PENNSYLVANIA

COLORADO, KANSAS

OHIO, CALIFORNIA, IDAHO, WASH.

WISCONSIN, ILLINOIS

MONTANA

ARIZONA

NEVADA

DISTRICT OF COLUMBIA, RHODE ISLAND

Each symbol represents 10,000 pounds of gross weight

PICTORIAL STATISTICS, INC., FOR PUBLIC AFFAIRS COMMITTEE, INC.

Digitized by Google

of dimension, safety, and liability requirements that at times he finds himself violating one state's laws in order to comply with the laws of an adjoining state. Such laws can and do provide a serious barrier to interstate commerce. A trucker in Connecticut may not drive a vehicle whose loaded weight exceeds 40,000 pounds, while the Rhode Island trucker may operate a truck of three times the weight. An Illinois truck operator may not be able to drive into Kentucky because of the 18,000 pound maximum, while Kentucky trucks drive freely into any adjoining state, so far as maximum weights are concerned.

## Protecting the Consumer

Everyone is agreed that the protection of consumers against harmful products and disease is one of the chief responsibilities of state and local governments. Thus, all states and most cities have laws and ordinances to insure a pure milk supply. Most states have food grading laws to protect consumers from unscrupulous or careless food dealers who might sell them inferior or harmful food products. Ironically enough, however, many state and local trade barriers have been erected as a supposed protection for consumers when in fact they have just the opposite effect. Laws which protect special interest groups of producers from out-of-state competition fail in their purpose of reducing competition unless they make the consumer pay more for his goods. Thus laws whose real object is to give advantages to local dairy farmers are presented as health measures to insure pure milk for the consumer. Laws which are supposed to protect the consumer from having inferior grades of eggs passed off for better grades may similarly mislead him. He is likely to think that fresh eggs from across the nearest state line are not as good as state eggs because the out-of-state eggs are branded "shipped eggs," while the home product sells as "Arizona," or "Florida," or "Wyoming," or "Rhode Island," special eggs.

Digitized by Google

## Quarantines Keep Out Good Fruit—As Well as Insects

Or take the case of citrus fruit. California quarantines the oranges, lemons, and grapefruit of various Gulf states for diseases which haven't been known to exist there in years. They thus "protect" their consumers from eating any of these fruits that have not been grown at home or in Arizona. Many consumers like the flavor of the products of Texas and Florida better than the home product. But they have no choice in the matter. They eat what they can buy at home, or go without.

A few years ago Texas found its "infant" citrus industry was bothered by the competition of Florida and California oranges. This competition was a "nuisance" only during the season when Texas fruit was being marketed, from September to April. Therefore, the Texas Commissioner of Agriculture, under his authority to create and enforce quarantines to protect state farmers from plant diseases and insects, issued an order barring out-of-state citrus fruits from Texas except between April and September.

Up-state New York farmers go in for dairying because they can sell milk in large quantities in New York City as well as in several other large urban markets. But cows are necessary for producing milk. Therefore, breeders in a few western states, as well as in New York, had developed a good business supplying cattle for the New York dairy herds. When the depression became serious, New York cattle breeders found the western cattle being sold at prices which threatened their profits. The State of New York Commissioner of Agriculture came to their rescue by decreeing that all dairy cattle brought into New York must not only themselves be free from Bang's disease, but must come from herds certified to be free of Bang's disease for three consecutive inspections. At the time the order was issued, fewer than 1,500 herds in the United States could meet these standards, and it so happened that none of them was in the State of New York. But the stunt worked. Wisconsin's share in the New York dairy cattle market dropped abruptly from 9,553 cows in 1932 to 516 cows in 1933.

Digitized by Google

# TARIFFS MASQUERADING UNDER THE TAXING POWERS

WE have seen how trade barriers have been launched under the police and regulatory powers which governments employ to protect the public health, to prevent fraud, and to guard public safety and morals. We have found that state governments use their proprietary powers of ownership over public highways, works and property, and conservation of natural resources to favor home folks and businesses. They also favor home folks in the use of state funds, in hindering interstate truckers, and in embargoing the export of electric power. But so far we've dealt only with the less important trade barriers. The really "big time" state trade walls are based on the taxing powers of the states.

In the area of taxation, the states have "gone to town." They have taxed "foreign" corporations (that is, corporations chartered in other states) at higher rates than "domestic" (home chartered) corporations. The states have levied special taxes on "foreign" life insurance and "foreign" fire insurance companies. And "non-resident" trucks and automobiles have been the subject of many more than a few discriminatory taxes and fees. Half of the states have singled out chain stores, particularly the big nationwide chain systems, for discriminatory taxation which has driven some chains beyond their borders. The states have wielded the tax axe to drive out products made beyond their borders or produced from competitive raw materials, such as margarine, eggs, beer, wine, and alcoholic spirits. Finally, many states have adopted "use taxes" to reach the persons who evade sales taxes by buying some of their goods from out-of-state retailers.

Space does not permit us to cover all of the tax devices which have been adopted to discourage interstate trade. We shall hold ourselves to a few examples.

## Butter Substitutes Are Tabooed

Margarine has long been a competitor of butter for the

Digitized by Google

# TRADE BARRIER MAP

## COVERING A PARTIA




*Data: Council of State Governments.*



Digitized by Google

# F THE UNITED STATES

## IST OF TRADE WALLS

L. 1, 1939




© BUSINESS WEEK

neral retail sales taxes*

nomic barrier features

Discrimination against out-of-state beers

t-of-state wines

Discrimination against out-of-state liquors

Maryland, Kentucky have special vehicle use taxes.

Courtesy, *Business Week*



Digitized by Google

bread of the poor. Invented in France, by a French cook named Mège-Mouries, in competition for a prize offered by Louis Napoleon, it was originally made chiefly of animal fats. In the last twenty years it has been made mostly from vegetable fats. When it was first introduced in the United States, some unscrupulous producers colored it yellow in the attempt to pass it off as butter, or disguised it for the unsuspecting consumer by such names as "Butterine." Consumers and creamery operators soon raised a legitimate complaint and laws were passed guarding against fraud. New Hampshire and Vermont, dairying states, went a step further and sought to exclude margarine from their markets by requiring that it must be colored pink when offered for sale within their borders. Several other states followed the same formula. Minnesota varied the idea by making green the legal color. But the federal Supreme Court struck down the "pink" margarine laws as unwarranted state interference with interstate commerce, ruling that such legislation did not protect consumers, but excluded an edible food from a state's markets.

Following the failure of the "pink" margarine laws in 1898, butter producers couldn't think up new ways of destroying their competitor for about twenty years. Then Oregon, Washington, and Wisconsin experimented with license taxes on dealers and manufacturers of margarine, and prohibitions on the mixing of milk or milk products with other oils used in its manufacture to impart a butter-like flavor. The license taxes failed to discourage consumers from eating the product, and the prohibition on the use of milk in making margarine was struck down by the courts. However, an inventive California legislator, in 1925, had the happy thought of applying an excise tax to margarine just as California already levied an excise tax on gasoline. The law was hardly on the statute books before it was repealed by a referendum. However, the idea was so good that Utah legislators adopted the principle in 1929. After that other farm states quickly caught on and by 1932 most of the states where dairying is important had excise tax laws levying a "protective tariff" for butter which

Digitized by Google

varied from five cents to fifteen cents per pound. In 1934 the Supreme Court upheld Washington's fifteen-cent excise tax.

Beginning in 1933 the southern states, although disliking the excise taxes on margarine of northern dairy states, used the excise tax idea for other purposes. One after another they applied the excise tax to margarine not made exclusively from cottonseed oil or other home-produced fats and oils, but which contained imported cocoanut or palm oils.

Thus, today thirty states attempt to limit the sale of margarine within their borders in order to protect various home producers. Of these, nine states apply their "protective tariffs" to all margarine, in order to protect butter producers. Fifteen states protect cottonseed oil or other domestic fats and oil producers against the competition of cocoanut and other imported oils by excise taxes on margarine containing such foreign ingredients. Six states levy only a license tax, while nine of the states which levy excise taxes also employ licenses to collect fees from dealers, manufacturers, and other handlers of the product.

## Helping Local Industry

Since the Eighteenth Amendment was replaced by the Twenty-first Amendment in 1934, "the transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." This constitutional provision, to protect states the voters of which choose to go "dry," was immediately seized upon to set up a system of trade barriers for which the only limit is the ingenuity of a state's legislators. During the past five years an amazing variety of restrictions on the import of out-of-state liquors have been adopted.

Protection of a state's domestic manufacturers and wholesalers of alcoholic beverages takes at least five forms: (1) lower excise taxes on alcoholic beverages, especially wines, which are manufactured from domestic rather than from out-

Digitized by Google

of-state or partly out-of-state alcoholic beverages; (2) higher license fees on wholesalers who handle imported alcoholic beverages than on those who handle domestic products only; (3) special license fees or "certificates of approval" for non-resident manufacturers who wish to ship into states; (4) requirements that a manufacturer qualify to do business in the state as a foreign corporation before he can secure a license; and (5) explicit or implicit advantages to domestic products given by the liquor stores in those states which themselves monopolize the retailing of liquor.

Preference to farm producers of raw materials usable in liquor manufacture may take several forms likewise: (1) lower taxes on wines made from local raw materials than on those made from "foreign" grapes; (2) sale by domestic producers directly to retailers rather than through wholesalers; and (3) requirements that a certain percentage of the alcoholic beverage be made from specified products grown in the state.

Let us look at a few examples. The State of Maine levies a license fee of $3,000 on distillers, brewers, or wineries using exclusively out-of-state agricultural products, although the license fee for the user of exclusively Maine farm products is but $100. If both Maine and out-of-state products are used, the license fee is proportionate to the quantity and source of the raw materials.

Michigan protects its wine grape growers by a very clever tax law. Native wines of 16 per cent or less alcoholic content and blended wines containing 75 per cent native wines or spirits are taxed four cents a gallon, provided $55 per ton or more is paid for native grapes. Out-of-state wines are taxed at fifty cents a gallon, except when used for blending with native wines, in which case the tax is only ten cents. This is the tax which California protested. It threatened to get back at Michigan by refusing to buy Michigan cars and trucks for state use.

No fewer than twenty-seven states have laws giving special aid to wine produced within their borders or wine containing state-grown grapes. Twenty-four states similarly help their

Digitized by Google

beer industry, and sixteen states assist resident distillers of "hard" liquor or dealers. Many of these measures are retaliatory. For instance, the Rhode Island law is directed against all liquor imported from states which discriminate against Rhode Island alcoholic beverages.

An interesting policy is maintained by nearly all states with regard to beverages produced within their borders for export to other states. They encourage such exports by exempting them from all or most of the taxes applicable to the same products if sold for state use. In this respect state policy resembles somewhat that of the nations which subsidize exports by various measures while hampering imports by duties, quotas, or other restrictions.

## CONSEQUENCES OF STATE TRADE BARRIERS

IT cannot be said that these trade barriers do not benefit anyone. Some interested groups and individuals do obtain an advantage over their competitors. But this advantage is much less than is usually anticipated. And for every one who gains, many lose. It is clear that these restrictions injure outside producers. And in so doing they cut down outside demand for a state's products. For outsiders cannot buy unless they can sell. However, that is by no means the only injury done. The consumers within the state are harmed by barriers which make it more costly or more difficult for them to buy what they need. Consumers often do not see that they are the victims of such legislation, but they foot the bill nevertheless.

Moreover, trade barriers hurt many more home producers than they help, because of the reprisals and retaliations which so often follow in the wake of such practices. Time and again controversies break out when a trade barrier is erected, accompanied by a long series of clashes, and an aftermath of ill feelings. A recent study by the Bureau of Agricultural Economics of the United States Department of Agriculture dis-

Digitized by Google

closed that no fewer than fifteen interstate disputes have occurred over alleged truck barriers in the last few years. Some of these controversies included as many as half a dozen states. These disputes were costly, not only to interstate truckers, but also to a great number of shippers, and the consumers who depend upon truck transportation.

Sometimes a trade barrier is a boomerang for the very groups for which it is erected. For instance, Michigan grape growers have suffered from very low prices in recent years. The high price provided for wine grapes in the form of the law mentioned above led grape growers to increase their output many fold. This has meant that only a small part of the grapes sell at the premium price of $55 per ton for wine-making, and the bulk of the crop has had to be sold at ruinously low prices. To make matters worse, Michigan wine consumers do not appear to like the home wines they are virtually forced to drink because of the high taxes on California and other outside wines, for wine consumption has been dropping steadily for several years. Hard liquor is being drunk instead of wine in Michigan. Thus the grape growers of Michigan, although they get a premium price for part of their grapes, find their protected market is built on sand and is rapidly sinking, leaving them with huge surpluses they must dump at disastrous prices.

## WHAT TO DO ABOUT STATE TRADE BARRIERS

OUR forty-eight states are not independent nations. They cannot prosper alone and individually. This was well illustrated when Lee O'Daniel, in his race for the office of Governor of Texas, told how the Lone Star farmer must sleep on an Ohio mattress, rise in the morning to the jangle of an alarm clock from Connecticut, put on Missouri-made shoes, eat Michigan corn flakes, feed his horse Oklahoma hay, and turn his fields with an Illinois plow. He might have added that the Texan is able to buy these things because he sells

Digitized by Google

his cotton, wheat, cattle, fruit, and oil to the rest of the country as well as the outside world.

The states depend on each other. Yet they insist on behaving as competitive nations. "So what?" you ask. What would happen if we permitted them to wall themselves in as they pleased? If allowed to continue, the exclusion of each other's products can lead only to bitterness and disputes and poor business all around. One of the basic reasons for the sad state of affairs in the world, and especially in Europe, today is the multitude of small nations and artificial hindrances to the flow of commerce, created in the spirit of economic selfishness.

"Agreed," you say, "but what can we do about it?" We can do several things. In fact, some steps have already been taken with considerable success.

## Put on the Brakes

The first and most obvious step is to prevent the passage of additional new trade-barrier laws.

Early in 1939, the states, through their joint agency, the Council of State Governments, with the aid of many departments of the federal government, started a campaign to eliminate state trade barriers. It began with a national conference on interstate trade barriers. President Roosevelt and Secretary of State Cordell Hull led in appealing for a reversal in policy.

A widespread publicity and educational program was started, a program which sought to reach the forty-four state legislatures which held regular sessions in 1939.

A midyear survey, taken in July, 1939, shows that the movement toward higher state trade walls was definitely checked. A large number of proposed trade-barrier bills were rejected by the states. Many retaliatory measures were postponed until offending states could take action in removing the causes of the dispute. California's legislature shelved a bill which would have struck at Michigan's wine law by stop-

Digitized by Google

ping the purchase of Michigan-manufactured cars, trucks, and other products, for public use in California. Texas dropped a port-of-entry bill aimed at Oklahoma when Oklahoma promised to repeal its port-of-entry law to ease the tension along the Red River boundary between Oklahoma and Texas. West Virginia turned down a bill to prohibit state purchases of products from states which discriminated against West Virginia goods.

Proposals to extend one of the oldest types of state trade barriers—preferences to local materials and products in state purchases—were defeated in New York, Ohio, Texas, and Minnesota.

## Farm Barriers Defeated

In line with recommendations of the National Conference on Interstate Trade Barriers on oleomargarine excise taxes, inspection taxes on out-of-state products, and milkshed discriminations, several states defeated such measures. Oregon and Vermont refused to enact laws to impose special taxes on margarine for the benefit of their local dairy industries, and Iowa turned down a measure to "up" its excise tax on the product to a prohibitive level. Florida refused to levy a one cent per pound inspection tax on dressed poultry imported into the state, and even went so far as to repeal its discriminatory inspection tax on imported eggs. Arkansas reconsidered and did not adopt a proposal which would have carried state agricultural tariffs to a new high—a bill to tax at 25 per cent of value all agricultural products imported from Iowa, Minnesota, Washington, and Wisconsin—aimed at "dairy" states which tax margarine containing cottonseed oil.

Many other state trade barrier proposals were shelved, for the time being, at least.

## What About Existing Barriers?

Although the multiplication of state barriers to trade

Digitized by Google

seems to be checked, at least temporarily, there are still hundreds of such laws already in existence.

The National Conference on Interstate Trade Barriers proposed "A concerted effort by the states to eliminate tariff barriers among themselves," by "encouraging the repeal of trade-barrier legislation already adopted by the several states." In order to carry such efforts beyond the stage of mere exhortation, the Council of State Governments has already created machinery to improve relations between the states and settle such disputes as arise. Some forty state Commissions on Interstate Cooperation have been set up for just such a purpose. These commissions have successfully settled several interstate misunderstandings in fields other than state trade barriers. Interstate agreements conserving fish in the Great Lakes are now in final stages of negotiation. Similar compacts to stop pollution of the Delaware and Ohio Rivers have been negotiated among the states drained by those streams.

Now it is proposed that the Council of State Governments and the states' Commissions on Interstate Cooperation undertake to remove state trade barriers by measures which are much like the Hull trade treaties. The National Conference resolved, "in order to provide facilities for the conciliation of specific differences between states resulting from trade barriers . . . the state which considers itself adversely affected by the legislation of another state, petition the Council of State Governments to use its good offices to arrange a conference with the state which has enacted offending legislation before taking any other action."

At best, the removal of trade barriers through repeal of existing laws is a slow process. Once a law favoring special groups is on the books, it creates a vested interest which will fight bitterly against repeal. Occasionally, however, states have voluntarily removed such laws. Missouri repealed an act early in 1939 which provided for retaliatory action against all states favoring their local liquor producers. Under pressure and reprisal threats of neighboring states, Indiana revised its "home beer" law.

Digitized by Google

Other states have substituted "good neighbor" policies for "bad neighbor" laws, but more often hesitancy is the rule. Although much pressure has been brought on Wisconsin, through southern reprisals and threatened boycotts, to repeal its margarine tax, the majority of legislators voted with a Wisconsin state senator who declared, "When every other state has from two to a dozen tariff laws, Wisconsin is entitled to at least one. If we repeal this tax, it is a stab at the very heart of our dairy industry, and we must protect ourselves." The Wisconsin farmer can't be converted to any other opinion even though every college freshman knows that protective tariffs cannot "protect" an industry that sells its goods abroad. And Wisconsin sells about 90 per cent of its butter outside the state. Michigan grape growers insist on keeping their "protective tariff" on wine, even though the state may lose many millions of dollars worth of automobile business. Local truck operators and the powerful railroad lobbies will fight to continue measures which hamstring their interstate truck competitors. And so it goes—examples could run on indefinitely.

Suppose the present change of heart by the states proves to be but a temporary one and the 1939 application of "the brakes" does not stop the growth of interstate barriers. Suppose repeal measures ultimately fail to iron out existing causes of interstate squabbles. What can be done?

## Federal Intervention

In adopting the Constitution, the thirteen original states subscribed to the principles that "No state shall, without the consent of Congress lay any Imposts or Duties on Exports or Imports," and that Congress alone shall have the power "to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes." One by one, thirty-five more states endorsed these principles as they gained statehood. Therefore, in theory, the forty-eight states are now agreed on these basic principles.

Digitized by Google

But, as we have seen, the states have insisted on exercising their "rights" in the fields of taxes, police, and corporate powers in violation of these principles. Furthermore, the Twenty-first Amendment specifically increased their "rights" in regard to liquor.

The courts have ruled out "direct" burdens on interstate commerce by the states, but the states have devised so many "indirect" burdens that in some cases the result is much the same as if they had been permitted to regulate interstate trade.

## Amend the Constitution?

This situation suggests one easy answer—amend the Constitution again so as to take away from the states these "other ways of skinning the cat" and give the powers to Congress. By such an amendment it would be perfectly possible for the federal government to eliminate all hijacking state trade laws, and to standardize taxation, quarantine, grading and labeling, and liquor control measures throughout the country. That would eliminate trade barriers, but the states themselves would be pretty well eliminated in the process. Few people today would favor such a drastic solution, although if the states continue to run wild in using their "rights," such a measure might eventually be necessary.

## Federal-State Action

A more moderate program on which many might agree would include both state and federal action. Such a program would be a long time affair. Probably there is no practical way of making short work of the state trade barrier growth.

The program for the states which is being carried out through the Council of State Governments and the various state Commissions on Interstate Cooperation shows much promise, but as we have seen, it can be stalemated by special, protected home groups. Therefore, it may need aid from out-

Digitized by Google

side sources from time to time. Such aid might come from the federal government in one of several ways. In certain fields of legislation, notably quarantines, Congress already has the power to act. The states may act only in the absence of the assumption of authority by Congress. Also, it has been suggested that Congress empower the Department of Agriculture to cooperate with the states and localities in establishing a state-federal system of milk inspectors, so as to eliminate the variation in standards which plays such havoc in the milksheds, especially in the East. Congress could do several other things to improve the situation. Through its control of grants-in-aid to the states for building and improving highways, it could bring pressure on the states to standardize their dimension and equipment requirements for interstate trucks —at least for trucks using state highways built with federal assistance. It could eliminate much of the confusion, misinformation, and discrimination against the products of various states, caused by lack of uniformity in state grading, packing, labeling, and container laws, by extending the federal grading laws and standard container acts to cover many commodities other than those already covered. In enacting such legislation, Congress would not only give positive aid to some states and their farmers, but to the consuming public as a whole. The action taken by Congress in the Fair Labor Standards Act or the Hours and Wages law is an example of federal action which tends to smooth out interstate relations by eliminating a certain amount of friction due to differences of conditions among the states.

## Positive Action by the States

Unquestionably the primary responsibility for removing trade barriers rests with the states themselves. If they can overcome local vested interests sufficiently, they can pursue two lines of action. The first of these is the "uniform law" method. States have already adopted uniform laws on many

Digitized by Google

subjects. There is no valid reason why uniform legislation should not be extended into the trade barrier field. Only shortsighted selfishness could interfere. But that is too often an insurmountable difficulty. The second possibility is the use of "compacts" to regulate activities which concern two or more states, or to settle problems which involve the states of a region. Such agreements must cover constitutional purposes, and are subject to the approval of Congress. Both of these methods require that the officials of the states engaged in the dispute be willing to negotiate around the conference table. Furthermore, both require compromise and the sacrifice of some of the states' "rights," namely the rights to injure consumers at home in addition to producers of neighbor states. Thus we are back to the premise we started with: It is up to the states.

We are driven to a conclusion which has been expressed for us by the marketing committee of the National Association of Commissioners, Secretaries, and Directors of Agriculture. It declared: "The right to self-government is inextricably enmeshed with the duty of self-restraint. Just as individual freedom is eventually curbed when the individual fails to subordinate the exercise of his liberty to the general welfare of the community, so the priceless states' rights will gradually be lost to federal dominance if the state governmental agencies fail to give due consideration to equally priceless interstate rights."

If the states muff their chance by refusing to act, ultimately the federal government will be forced to act in the interest of national welfare and at the cost of states' "rights." A government or agency of government which is blind to public need will be replaced by some authority capable of doing its job when the matter becomes vital to the public welfare. Probably the states will learn this lesson before it is too late. If not, we can expect a further and drastic change in our federal system with increased centralization of power in Washington.

Digitized by Google

# FOR FURTHER READING

## Books

Melder, F. Eugene, *State and Local Barriers to Interstate Commerce in the United States.* Orono, Maine. University of Maine Press. 1937

Taylor, George R., Burtis, Edgar L., and Waugh, Frederick V., of the U. S. Department of Agriculture, A Special Report, *Barriers to Internal Trade in Farm Products.* Washington, Government Printing Office. 1939

*Trade Barriers Among the States.* Proceedings of the National Conference on Interstate Trade Barriers. Chicago, The Council of State Governments. 1939

Works Progress Administration—Marketing Laws Survey, *Comparative Charts of State Statutes Illustrating Barriers to Trade Between States.* Washington, Government Printing Office. May, 1939

## Articles

Adams, James Truslow, "Balkanizing the United States," *Barron's Weekly.* March 20, 1939

————, "What of the State Trade Barriers?" *The Rotarian,* November, 1939

Baum, Arthur W., "Forty-Eight Kingdoms," *Country Gentleman.* July, 1939

Beard, Charles A., "Forty-Eight Sovereigns," *Today.* January 11, 1936

Buell, Raymond L., "Death by Tariff," *Fortune.* August, 1938; or *Public Policy Pamphlets,* University of Chicago Press. 1938

Cook, Lewis H., "Trade Wars Among the States," *Country Gentleman.* August, 1931

Flynn, John T., "Shove Thy Neighbor," *Collier's.* April 30, 1938, Reprinted in *Reader's Digest.* August, 1938

"Liquor Control: The Latest Phase," *Columbia Law Review.* Vol. 38, April, 1938

Digitized by Google

Melder, F. Eugene, "Economic War Among Our States," *Events*. August, 1938

————, "Trade Barriers and States Rights," *American Bar Association Journal*. April, 1939

————, "The World Situation and State Trade Barriers," *State Government*. April, 1939

Melder, F. Eugene and Green, Thomas S., Trade Barrier Research Bulletin Series, Fourteen Bulletins, Council of State Governments. March, 1939

"Progress Against State Tariffs," *State Government*. July, 1939

Rogers, J. H., "From State Rights to State Autarchy," *Harper's*. November, 1938

"A Special Report to Executives on the War Between the States," *Business Week*. July 15, 1939

Spencer, Leland, "Practice and Theory of Market Exclusion within the United States," *Journal of Farm Economics*. February, 1933

Taylor, Geo. R., "Shall State Boundaries Become Chinese Walls?" *Dun's Review*. October, 1939

Digitized by Google

THIS pamphlet is the 37th of a series published by the Public Affairs Committee. The other titles available are listed on the back cover.

More than 1,300,000 of these pamphlets have been sold. Busy men and women are finding them valuable time-savers in keeping up with important questions of the day.

You may subscribe to the pamphlet series, as you would to any magazine. For $3 you may have 36 issues, and for $2 any 24 consecutive issues. Those that have been published will be sent immediately, and the balance as they appear monthly.

The publication of the Public Affairs Pamphlets is one of the activities of the Public Affairs Committee, whose purpose as expressed in its Constitution is "to make available in summary and inexpensive form the results of research on economic and social problems to aid in the understanding and development of American policy. The sole purpose of the Committee is educational. It has no economic or social program of its own to promote." The members serve in a personal capacity and not as representatives of their respective organizations. Publication of a pamphlet does not necessarily imply the Committee's approval of the statements or views contained in it.


The Committee

Robert P. Lane, Chairman
Lyman Bryson, Vice Chairman
S. M. Keeny, Secretary
Luther Gulick, Treasurer
Raymond Leslie Buell
Frederick V. Field
William F. Foster
Harry D. Gideonse
Francis P. Miller
Felix Morley
George Soule
Ordway Tead

Maxwell S. Stewart, Editor of the Pamphlet Series
Caroline C. Rounds, Assistant Secretary
Marion Humble, Educational Publicity


---


All rights reserved. No part of this pamphlet may be reproduced without permission, except short passages of no more than 500 words in length, which may be quoted by a reviewer or commentator, with full credit to the Committee. For permission to use longer excerpts, write to the Public Affairs Committee, Incorporated, 30 Rockefeller Plaza, New York, N. Y.



First Printing, November, 1939

Printed in the United States of America




Digitized by Google

Digitized by Google

## PUBLIC AFFAIRS PAMPHLETS

INCOME AND ECONOMIC PROGRESS
SECURITY OR THE DOLE?
CREDIT FOR CONSUMERS
THE SOUTH'S PLACE IN THE NATION
THE SUPREME COURT AND THE CONSTITUTION
THIS QUESTION OF RELIEF
RESTLESS AMERICANS
DOCTORS, DOLLARS AND DISEASE
FARMERS WITHOUT LAND
COLONIES, TRADE AND PROSPERITY
SAVING OUR SOIL
WHY WOMEN WORK
HOW WE SPEND OUR MONEY
CAN AMERICA BUILD HOUSES?
YOUR INCOME AND MINE
YOUTH IN THE WORLD OF TODAY
INDUSTRIAL PRICE POLICIES
BEHIND THE SYPHILIS CAMPAIGN
MACHINES AND TOMORROW'S WORLD
HOW GOOD ARE OUR COLLEGES?
WHO CAN AFFORD HEALTH?
OUR TAXES—AND WHAT THEY BUY
AMERICA AND THE REFUGEES
SCHOOLS FOR TOMORROW'S CITIZENS
TOWARD A HEALTHY AMERICA
COOPERATIVES IN THE U. S.
THIS PROBLEM OF FOOD
WHAT MAKES CRIME?
JOBS AFTER FORTY
DEBTS—GOOD OR BAD?

For quantity rates and list of new titles write:

**PUBLIC AFFAIRS COMMITTEE**
**INCORPORATED**
30 Rockefeller Plaza New York, N. Y.


Digitized by Google