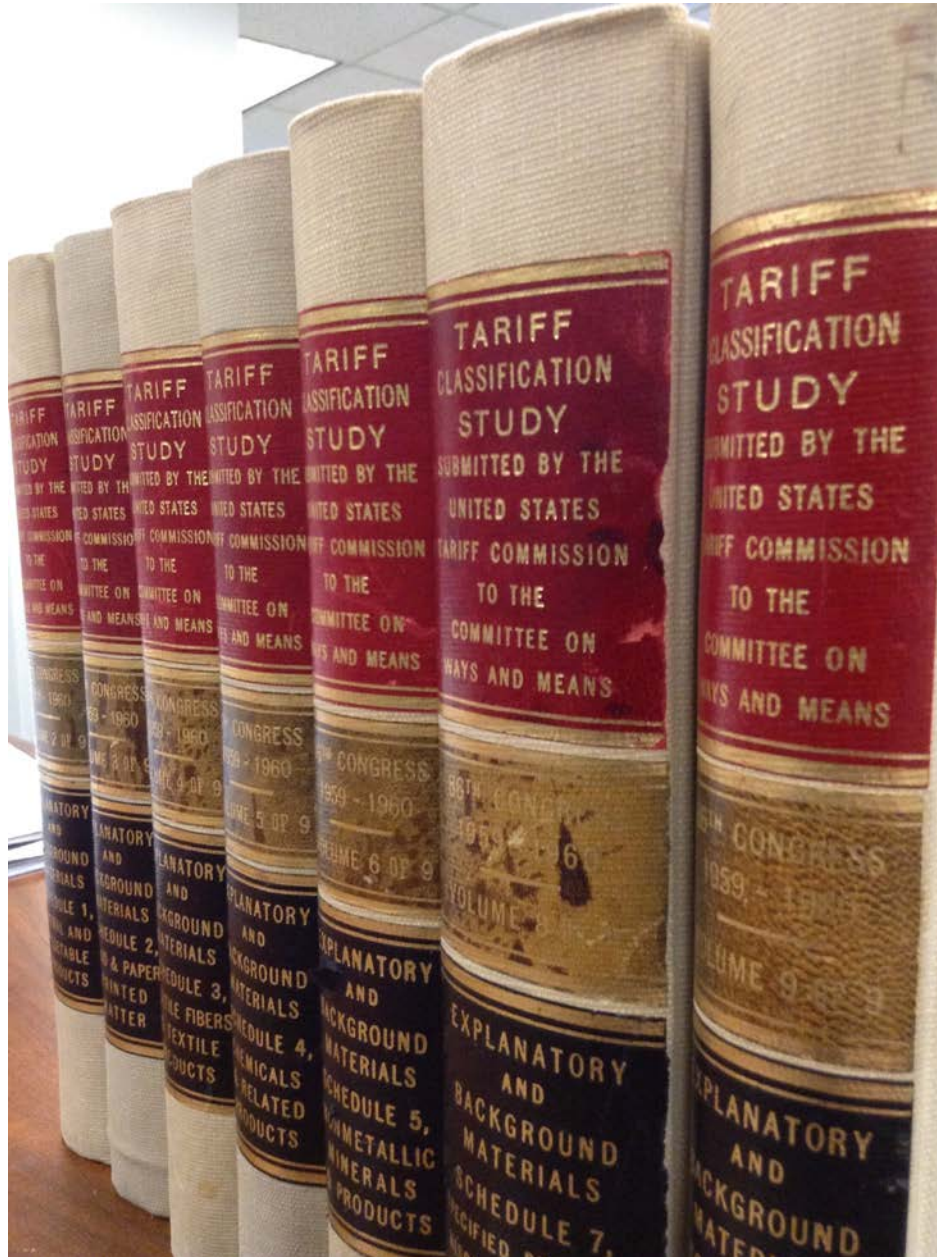


# Chapter 7

## Tariff Activities



**Photo:** 1960 Commission tariff study that led to the Tariff Schedule of the United States.

**Gene Rosengarden, Janis Summers, and Arun Butcher**<sup>399</sup>

As suggested by its name, and as discussed in other chapters, the United States Tariff Commission's central initial purpose was to focus on tariff matters. Due to the contentious nature of tariff policy debates in American politics,<sup>400</sup> the Tariff Commission (the "Commission") was created in response to a bipartisan desire that "tariff making should be more scientific, and that Congress should have a permanent and reliable source of tariff information at its disposal."<sup>401</sup> The Commission was established as a nonpartisan agency of experts tasked with investigating the effects of present and future customs laws and the effects of duties and tariffs on the United States and its economy. The Commission's employees were also expected to respond to questions about the arrangement of and classification within the tariff schedule.<sup>402</sup> The Commission and its staff had a responsibility to provide Congress and the President with an independent source of facts on these matters, with which the politicians could debate and decide on tariff policy.<sup>403</sup>

World War I disrupted the Commission's work in the years immediately following its founding. Nevertheless, during the war, the Commission began collecting and analyzing tariff information and data (in a document called the Tariff Information Catalog), including information about the effects of The Great War on tariffs.<sup>404</sup> The Commission also sought to fulfill its statutory mandate to examine the administration of U.S. customs laws,<sup>405</sup> but the war made the timely

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<sup>399</sup> Mr. Rosengarden was the Director of the Commission's Office of Tariff Affairs and Trade Agreements. He prepared the portion of the chapter on events starting in 1954. Ms. Summers and Mr. Butcher are current staff in that office, and wrote the other portion of the chapter.

<sup>400</sup> Karen E. Schnietz, "The 1916 Tariff Commission: Democrats' Use of Expert Information to Constrain Republican Tariff Protection," *Business and Economic History* vol. 23, no. 1 (Fall 1994) (Carnegie Mellon University), 178.

<sup>401</sup> William S. Culbertson, "The Tariff Commission and Its Work," *The North American Review*, vol. 207, no. 746 (January 1918), 57.

<sup>402</sup> Omnibus Revenue Act of 1916, § 702.

<sup>403</sup> Culbertson, *The Tariff Commission and Its Work*, 1918, 58.

<sup>404</sup> 1st Report of the Tariff Commission, 1917, 15-16.

<sup>405</sup> Omnibus Revenue Act of 1916, § 702.

completion of these efforts impossible.<sup>406</sup> Only after the Versailles Treaty of 1919 ended World War I did the Commission make one of its first suggestions to Congress: to add “elasticity” or “flexibility” to U.S. tariffs (i.e., enable the executive branch to raise or lower the statutory duty rate of a good) to allow the President to retaliate against unfair or discriminatory trade practices of other countries.<sup>407</sup>

In the 1920s, the Commission organized itself into sub-offices of experts designed to reflect the tariff schedule’s categories of goods, as outlined in the Underwood Tariff Act. It began a longstanding practice of the Commission to survey American industry and to send collected information to Congress—to both the House Committee on Ways and Means and the Senate Committee on Finance—in its *Tariff Information Surveys*. An example of one such survey, sent to Congress in 1921, deals with glass and glassware as well as goods related to glass.<sup>408</sup> The Commission also spent the early 1920s studying foreign tariff practices and policies, producing a number of “major reports” of varying focus and specificity such as: the *Handbook of Commercial Treaties Between All Nations*, the report on colonial tariff policies, and another on reciprocity between the U.S. and Canada.<sup>409</sup>

Congress passed the Tariff Act of 1922 (more commonly referred to as the Fordney-McCumber Tariff Act) to “adopt new methods in tariff making” due to “the rapidly changing economic conditions, both in the United States and foreign countries.”<sup>410</sup> The Act raised tariff rates significantly. Also, under the Fordney-McCumber Tariff Act, the elasticity power recommended by the Commission became law, and the Commission was given the task of investigating whether cost inequalities existed between products produced by American firms and those produced by their foreign competition (i.e., whether the duty made up the difference between the cost of production in the United States and the competing country). In addition, the Commission was expected to investigate whether importers or exporters were engaging in unfair or discriminatory trade practices (i.e., practices that would substantially injure U.S. industry or monopolize trade and commerce in the United States).<sup>411</sup> After conducting a thorough investigation, the Commission was to present a recommendation for Presidential action.

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<sup>406</sup> John Dobson, *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission* (Washington, DC: USITC, 1976), 91.

<sup>407</sup> U.S. Tariff Commission (USTC), *Fourth Annual Report of the USTC*, 1920 (Washington, DC: GPO, December 6, 1920), 9–10.

<sup>408</sup> USTC, *Tariff Information Surveys on the Articles in Paragraphs 83, 84, 85, 86, 87, 88, 89, 90, and 95 of the Tariff Act of 1913 and Related Articles in Other Paragraph* (Washington, DC: GPO, 1921).

<sup>409</sup> USTC, *Twentieth Annual Report of the USTC* (Washington, DC: GPO, December 1, 1936), 4.

<sup>410</sup> USTC, *Sixth Annual Report of the USTC*, 1922 (Washington, DC: GPO, December 4, 1922), 2.

<sup>411</sup> Fordney-McCumber Act of 1922, §§315–17.

One such cost investigation into Argentinian linseed and corn exports resulted in those exports being threatened by the United States with an increase in duties.<sup>412</sup> A second inquiry involved a 16-month cost investigation into sugar imports—a hugely important product, over which much external political pressure was exerted on the Commission. While the Commission ultimately recommended that the duty be reduced, that recommendation was rejected by President Calvin Coolidge.<sup>413</sup> Conducting such an inquiry was an extremely time-consuming process for the Commission, as evidenced by the fact that by 1924 the Commission had only completed 3 of the 37 investigations it had commenced.<sup>414</sup>

In the years after the passage of the Fordney-McCumber Tariff Act, the Commission's role in cost investigations and unfair trade investigations led many to question its independence and nonpartisanship. A Senate special committee was formed in 1926 to investigate the Commission's operations and found "ample evidence of politicization and unusual or suspicious proceedings."<sup>415</sup> Among the committee's findings was that Commission investigations rarely resulted in duty reductions and that, when they did, the reductions applied to less-than-meaningful portions of the tariff schedule.<sup>416</sup> The Senate also accused the Commission of sluggishness in its operations and, in particular, of neglecting its role in data collection. As such, the special committee concluded its investigation and advised the Senate to repeal the flexible provisions of Fordney-McCumber and to reorganize the Commission as a Congressional agency.<sup>417</sup> However, these recommendations were not acted upon.

In 1930, Congress enacted the Smoot-Hawley Tariff Act.<sup>418</sup> The Smoot-Hawley Act is, of course, most famous for raising duty rates across the tariff schedule to very high levels. At the same time, however, the Act continued the Commission's role in investigations and recommendation of duties vis-à-vis flexible tariffs originally authorized in the Fordney-McCumber Tariff Act.<sup>419</sup> Indeed, Congress' drafting of the Smoot-Hawley Act was heavily influenced by Commission reports and collections of Commission surveys (with results described in the Commission's *Summary of Tariff Information* series, which succeeded the *Tariff Information Surveys*) sent to Congress, as well as the testimony of Commission staff members over the preceding year. The Act changed the specifics of the Commissioners' terms as well as revised the duties and

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<sup>412</sup> Guido Di Tella and Desmond C. M. Platt, eds., *Political Economy of Argentina, 1880–1946* (Basingstoke, England: St. Anthony's/Macmillan, 1986), 86.

<sup>413</sup> USTC, *Seventh Annual Report of the USTC, 1923* (Washington, DC: GPO, December 3, 1923), 55.

<sup>414</sup> Dobson, *Two Centuries of Tariffs*, 1976, 97.

<sup>415</sup> Dobson, *Two Centuries of Tariffs*, 1976, 100.

<sup>416</sup> *Ibid.*

<sup>417</sup> *Norwegian Nitrogen Co. v. U.S.*, 288 U.S. 294, 313 (U.S. 1933)

<sup>418</sup> Tariff Act of 1930, Pub. L. No. 71-361.

<sup>419</sup> Dobson, *Two Centuries of Tariffs*, 1976, 34.

organization of the Commission. It was also the last of the “full-schedule congressional tariff schedule statute[s]”<sup>420</sup>—that is, it included the entire tariff schedule in the text of the law.

As the United States economy was seriously slowed by the stresses of the Great Depression, the post-Smoot-Hawley mechanisms developed by the Commission for altering tariff levels “seemed inadequate to the task of reviving world trade.”<sup>421</sup> The investigations required by the Smoot-Hawley Act consumed so much of the Commission’s time that, according to the Commission’s annual report for 1932, “not a day [since the passage of the Act] has [the Commission] had its docket cleared;”<sup>422</sup> its activities gathering tariff information were said to have suffered as a result.

However, in 1933, the Commission still managed to produce new trade and tariff data, as well as large reports to aid Congress in considering trade and tariff policies. In addition to its *Summaries of Tariff Information*, the Commission, in its *Economic Analysis of Foreign Trade of the United States in Relation to the Tariff*, “placed tariff rates and associated trade regulations in a broader perspective.”<sup>423</sup> The Senate also asked the Commission to prepare analyses of U.S. trade with 23 countries. Although the National Industrial Recovery Act of 1933<sup>424</sup> (the law authored with the help of this Commission-provided information) was ultimately ruled unconstitutional by the U.S. Supreme Court, President Franklin D. Roosevelt started to focus on addressing pressing issues of U.S. international trade policy as part of attempts to revive the U.S. economy. As such, Roosevelt included the Commission as a member of his newly formed Executive Committee on Commercial Policy (ECCP).

In addition to the Commission members, the ECCP was made up of high-ranking cabinet members from a number of important departments and agencies, including the Departments of State, Commerce, and Agriculture. The ECCP was tasked with carrying out a change in U.S. trade policy to a policy of reciprocity in tariff reductions with the United States’ trade partners. The Commission participated in this committee and produced reports that aided Congress in passing the Reciprocal Tariff Act in 1934,<sup>425</sup> which officially adopted a policy of reciprocity concerning tariffs. This Act gave President Roosevelt the authority to adjust tariff rates, as well as the power to negotiate bilateral trade agreements—without prior Congressional approval—

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<sup>420</sup> Dobson, *Two Centuries of Tariffs*, 1976, 104.

<sup>421</sup> Dobson, *Two Centuries of Tariffs*, 1976, 105.

<sup>422</sup> USITC, *Sixteenth Annual Report of the USITC*, 1932 (Washington, DC: GPO, November 30, 1932), 5.

<sup>423</sup> Dobson, *Two Centuries of Tariffs*, 1976, 106.

<sup>424</sup> National Industrial Recovery Act of 1933, Pub. L. No. 73-67.

<sup>425</sup> Reciprocal Tariff Act, 19 U.S.C. §1351.

that would reduce tariffs of U.S. trade partners in return for reciprocal reductions in U.S. tariffs.<sup>426</sup>

To help implement this Act, the ECCP formed the Interdepartmental Committee on Trade Agreements, which also included members from the Commission. This new committee formed 28 subcommittees, made up in part of Commission experts, each devoted to the study of a specific country with which the United States traded. These subcommittees made recommendations to the President and Secretary of State about rate changes to be considered in future bilateral trade agreements. Commission staff experts played a prominent role in this process, aiding the United States at many stages between subcommittee recommendations and the final agreement, identifying principal foreign suppliers of certain imported commodities, and suggesting negotiation strategies.<sup>427</sup>

A 1935 amendment to the Agricultural Adjustment Act of 1933 gave the Commission a new responsibility to conduct investigations into any import that might interfere with the Act's programs aimed at maintaining prices of goods produced by American farmers. The Act required these investigations, and their resulting Commission recommendations, before the President could impose import fees or quotas on the import or on any related article.<sup>428</sup>

As a result of this legislation, the Commission's tariff-related activities up to and during the Second World War focused on four matters: investigations of agricultural products, its work with reciprocal trade agreements, general data collection, and the issuance of reports on tariff matters. The conclusion of the Second World War, however, would see the Commission take a prominent role in helping to create a new international trade order. The agreement that would govern postwar international trade relations for almost 50 years, the General Agreement on Tariffs and Trade (GATT), was signed by the United States and 22 other nations in Geneva in October 1947. The GATT was a set of multilateral trade agreements crafted with the goal of abolishing or reducing quotas and tariff rates among its member nations and easing barriers to trade.

The Commission's data gathering and analysis were vital to U.S. postwar trade policy in general, and had been crucial to the U.S. negotiators of the GATT in particular, providing them with lists of articles where tariff reduction should be sought.<sup>429</sup> Along with sending various Commissioners and staff to the negotiations in Geneva, the Commission prepared reports containing some 1,300 line items "on which the United States was prepared to offer

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<sup>426</sup> Abraham Berglund, "The Reciprocal Trade Agreements Act of 1934," *American Economic Review* 25, no. 3 (September 1935), 411.

<sup>427</sup> Dobson, *Two Centuries of Tariffs*, 1976, 108–109.

<sup>428</sup> USTC, *Nineteenth Annual Report of the USTC*, 1935 (Washington, DC: GPO, January 3, 1936), 18.

<sup>429</sup> Dobson, *Two Centuries of Tariffs*, 1976, 114.

concessions.”<sup>430</sup> It also gave input to negotiators on the lists of concessions the United States sought from each of the other nations participating in the GATT. At the time of its completion, the GATT represented the largest multilateral trade negotiation ever held. The final product of the 1947 negotiations covered more than 45,000 items in the tariff schedules of the GATT member countries.

As one might expect with such an important milestone in tariff agreements, the Commission’s work changed after the GATT was signed by the President and entered into force. Executive Order No. 9832,<sup>431</sup> issued in February 1947, laid out how the United States would administer the GATT Article XIX escape-clause mechanism allowing the United States to withdraw from or modify any agreement in which negotiated concessions caused serious injury to U.S. industries. As a consequence, it also announced that all future trade agreements would contain an “escape clause” like the one found in the GATT. The Commission became responsible for investigating any complaint of import-related injury by conducting surveys, holding hearings, and then making its recommendations to the President.<sup>432</sup> These escape-clause investigations became a major function of the Commission. As for example, the first of these arose from relief requested by domestic producers from GATT concessions on spring clothespins after a Commission preliminary report found a formal investigation was justified.<sup>433</sup> It was the first request to proceed to formal investigation, but many other relief requests were made in the following years that all required at least a preliminary report to be produced by the Commission. Executive Order No. 9832 also required that the Commission produce a yearly report documenting the changes that had occurred as a result of reciprocity activities, including a summary and analysis of concessions made by and to the United States. These reports began in 1948.

The Trade Agreements Extension Act of 1948<sup>434</sup> ended the Commission’s direct involvement with trade agreement negotiations, but it initiated the Commission’s conduct of what became known as “peril-point analyses,” which required the Commission to produce reports analyzing all items the President was considering for tariff concessions to identify the limit to which the proposed concession could be extended without causing or threatening to cause serious injury to competing domestic industries.<sup>435</sup> However, such “peril-point analyses” were a source of

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<sup>430</sup> Dobson, *Two Centuries of Tariffs*, 1976, 114.

<sup>431</sup> Exec. Order No. 9832, 12 Fed. Reg. 40 (February 26, 1947).

<sup>432</sup> Dobson, *Two Centuries of Tariffs*, 1976, 115.

<sup>433</sup> USTC, *Thirty-third Annual Report of the USTC*, 1949 (Washington, DC: GPO, January 3, 1950), 15.

<sup>434</sup> Trade Agreements Extension Act of 1948, Pub. L. No. 792.

<sup>435</sup> Dobson, *Two Centuries of Tariffs*, 1976, 117.

continual disagreement between the Republicans and Democrats in Congress, and this new responsibility was repealed and reinstated over the next several years as a result.<sup>436</sup>

## Tariff Activities from 1954

### Tariff Schedules of the United States<sup>437</sup>

In a report to President Dwight D. Eisenhower in 1954, the Commission on Foreign Economic Policy (known as the Randall Commission) recommended that the Tariff Commission commence a study of the tariff structure then in place and to propose simplification of duty rates and product nomenclature.<sup>438</sup> The existing tariff had not undergone a thorough revision since its enactment in the Tariff Act of 1930. That Act was the 23rd principal tariff act passed by Congress since 1789.

As a result of the report, Congress enacted Public Law No. 83-768, which was known as the Tariff Simplification Act of 1954. The Tariff Simplification Act directed the Commission to compile a revision of the tariff under the following guidelines:

1. Establish schedules of tariff classifications which would be logical in arrangement and terminology and adapted to the changes that had occurred since 1930 in the character and importance of articles produced in and imported into the United States and in the market in which they were sold.
2. Eliminate anomalies and illogical results in the classification of articles.
3. Simplify the determination and application of tariff classifications.

Following a comprehensive review, numerous public hearings, and the receipt of comments from interested government agencies and parties, the Commission issued its report as the *Tariff Classification Study* (Washington, DC: GPO) on November 15, 1960. The report comprised seven volumes and included the draft tariff itself, along with explanations and the record of proceedings. Seven supplemental reports were issued through 1963.

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<sup>436</sup> Martha Liebler Gibson, *Conflict amid Consensus in American Trade Policy* (Washington, DC: Georgetown University Press, 2000), 80–84.

<sup>437</sup> USITC, excerpt from USITC Report on Investigation No. 332-131 under section 332 of the Tariff Act of 1930, USITC Publication 1400 (Washington, DC: USITC, June 1983).

<sup>438</sup> "Report to the President on Foreign Economic Policy, January 1954," 45–46.



**Box 7.1:** Russell Newton Shewmaker

This prodigious effort consumed approximately 300 work-years of Commission effort, but largely reflected the drafting and direction of the Commission's then-Assistant General Counsel, Russell N. Shewmaker.

Shewmaker served at the Commission from 1951 to 1981, and became General Counsel in 1964. He was chief drafter of the Tariff Classification Act of 1962 and, in 1963, of the Tariff Schedules of the United States. For this work he received letters of commendation from President John F. Kennedy and from the Chairmen of the Senate Finance Committee and the House Ways and Means Committee.

In 1963 and 1964, Shewmaker served as U.S. representative to the European Economic Community (EEC) on tariff nomenclature and further helped to influence tariff nomenclature in the EEC. He was a delegate to the Customs Cooperation Council in Brussels in 1964 and 1965 and a member of the U.S. delegation to the GATT in Geneva in 1967.

Russell Shewmaker died on January 4, 1988.<sup>a</sup>

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<sup>a</sup> *Washington Post*, "Russell Shewmaker, Trade Counsel Who Drafted Tariff Laws, Dies," January 6, 1988.

After consideration, Congress enacted the revised tariff schedules in the Tariff Classification Act of 1962.<sup>439</sup> Pursuant to that act, the President proclaimed the new tariff, the Tariff Schedules of the United States (TSUS), effective August 31, 1963.<sup>440</sup>

The new tariff schedules represented a sea change in organization and detail from the old paragraph system of the Tariff Act of 1930.

The TSUS attempted to provide descriptions of articles by name, in categories designating one or a group of related products, and sought to avoid more general descriptions of goods, such as by material of manufacture. In addition, the eight schedules of product categories were set forth in a hierarchical arrangement, arranged by sectors from basic products to finished goods and broken into 5-digit primary or legal provisions and their duty rates. The numbering system was consistently related to the overall organization of the system. In addition, the annotated version of the tariff incorporated further product detail by adding 2 more digits to designate statistical categories, designed to gather data on particular goods. Combining the tariff's legal provisions with import statistical requirements in a single integrated nomenclature generally assured greater accuracy in reporting and publishing data. To clarify the product scope of tariff provisions and to ensure that every imported good subject to the tariff was classified in one

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<sup>439</sup> Pub. L. No. 87-456, May 24, 1962, 76 Stat. 72, as amended by Pub. L. No. 87-794, October 11, 1962, 76 Stat. 882.

<sup>440</sup> Proclamation No. 3548, 28 Fed. Reg. 9279 (August 21, 1963).

place and one place only, special legal rules, known as General or Schedule Headnotes, were inserted at appropriate places in the tariff.

While many of these aspects were new to the U.S. tariff, they were reflected in other systems that influenced the development of the TSUS. Included among these were the Nomenclature for the Classification of Goods in Customs Tariffs (later referred to as the Brussels Tariff Nomenclature and, still later, as the Customs Cooperation Council Nomenclature (CCCN)) and the Standard Industrial Classification used to report U.S. industrial production. Nevertheless, the TSUS was unique and represented a significant step forward for the United States.

## The Harmonized Tariff System

### Roots of the Harmonized Tariff System<sup>441</sup>

For decades, the international trade community encountered difficulties caused by the number and diversity of classification systems covering goods moving in international trade. A study by the Department of Transportation indicated that goods moving from shipper to ultimate consignee had to undergo classification in as many as 17 different classification systems. Shippers, importers, and brokers had to understand and apply a number of different systems, each of which employed different product descriptions, numbering, and organizational formats. This situation complicated the preparation of customs and transport documents, impeded the use of electronic data processing in international transactions, hampered the analysis of trade data, and created uncertainty in the negotiation and interpretation of trade agreements.

Following a presentation from the Secretariat of the Customs Cooperation Council (CCC) in Brussels, the United Nations Economic Commission for Europe recommended that the CCC undertake a feasibility study to develop a classification to be known as the Harmonized Commodity Description and Coding System (HS). The CCC established a Study Group to assess the feasibility of developing such a system. The Study Group report concluded that the system was not only feasible but essential to the long-term needs of international trade.

Not surprisingly, the report recommended that the HS be based on the Council's own CCC nomenclature, but the report acknowledged that a new system should also constitute a more detailed classification scheme, containing many new subdivisions to reflect changes in technology, trade patterns, and user requirements. The Study Group's report was accepted by the plenary CCC in June 1973, and a Harmonized System Committee (HSC) was formed to develop the system. The committee was composed of a representative number of countries

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<sup>441</sup> USITC, excerpt from *Conversion of the Tariff Schedules of the United States*, 1983. This shorthand name of the international nomenclature refers to the Harmonized Commodity Description and Coding System.

from each trading continent and intergovernmental and international nongovernmental organizations. Work began in earnest during the fall of 1973.<sup>442</sup>

## U.S. Participation in Creating the Harmonized System

When the United States acceded to the CCC Convention in 1973, as a condition for the Customs Service to serve as U.S. representative to that organization, an Interagency Advisory Committee (IAC) on CCC Matters was established. The committee consisted of the agencies generally responsible for U.S. trade policy and included the Commission as a member.

On January 3, 1975, Congress approved the Trade Act of 1974 (Public Law 93-618), which officially renamed the Tariff Commission as the U.S. International Trade Commission (section 330). Section 608(c) of the Act directed the Commission to undertake an investigation that would provide the basis for the Commission to participate in the U.S. technical contribution to the HS's development and to ensure that it recognized the needs of the American business community. Accordingly, the Commission initiated Investigation No. 332-73 on January 31, 1975.<sup>443</sup> Shortly thereafter, the IAC agreed that the Commission investigation would serve as the basis for the preparation and representation of U.S. technical work on the HS.

Development of the technical work at the World Customs Organization (WCO) proceeded from that time until the end of 1981. During that eight-year period, Commission staff and representatives of other participating agencies, particularly the U.S. Customs Service, the Bureau of the Census, and the Department of Agriculture, worked closely with U.S. agriculture and industry representatives to develop proposals. The U.S. delegation was chaired by members of the U.S. Customs Service, principally Paul Giguere followed by Dale Torrance, both of Customs' Office of Rulings and Regulations. Gene Rosengarden, then Commission Assistant General Counsel and later Director of the Commission's Office of Tariff Affairs, served as advisor or vice chair and occasionally chair of the U.S. delegation. Throughout the development process, Commission representatives were responsible for preparing and articulating U.S. technical positions and proposals at the HSC. Frequently, industry representatives were invited to serve as advisors to the U.S. delegation.

Meanwhile, in 1977, the Commission went through a painstaking reorganization of its staff. The long-term nature of the HS investigation and the need to maintain expertise on product nomenclature caused the Commission to consolidate all tariff and statistical nomenclature activities into the Office of Nomenclature, Valuation, and Related Activities (now the Office of Tariff Affairs and Trade Agreements), effective January 1978. The office was staffed with

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<sup>442</sup> It is interesting to note that the impetus for the HS came not from the agencies that normally take the lead in establishing trade policy but from the Department of Transportation, assisted by the Customs Service.

<sup>443</sup> USITC, excerpt from *Conversion of the Tariff Schedules of the United States Annotated*, June 1983.

product nomenclature specialists, attorneys, and administrative and support staff. It is a tribute to the vision and foresight of the Commission under the chairmanship of Will Leonard that the organization of this Office has remained largely unchanged since January 1978, merely expanding its role in trade support for the executive branch.

As technical work on the HS neared completion, the HSC turned its attention to the umbrella convention for which the HS itself would form the principal Annex. The International Convention on the Harmonized Commodity Description and Coding System required contracting parties to use and apply all the headings and subheadings of the system, without exception, addition, or modification (with certain special and differential treatment permitted for developing countries). Also, contracting parties had to make their import and export trade statistics available at least at the level of the HS 6-digit codes. Further subcategories beyond the 6-digit level of the HS could be included at the national level to reflect tariff and more detailed statistical requirements. Duty rates are not part of the HS itself and are shown only in national schedules.

A major issue in completing the HS concerned its continued maintenance going forward. Under the old CCCN, upon which the HS was based, there was a Nomenclature Committee that was primarily devoted to resolving classification issues and, it seemed, secondarily responsible for updating the nomenclature. Under the HTS, a new but similar committee, to be called the Harmonized System Committee, was envisioned. The Commission staff recognized that product nomenclatures, no matter how recent, are always out of date, as it is impossible for it to keep up with constant changes in technology and patterns of international trade. In light of these fast changes and the length of time it had taken to complete the HS, the Commission proposed that the United States seek the creation of a new WCO committee, separate from the Harmonized System Committee, to deal exclusively with the matter of updating the HS. Eventually, the HSC agreed to establish a Review Sub-committee (under the HSC) responsible solely for proposing amendments to modernize the system. Since coming into force in January 1988, the HS has been amended six times, resulting in many hundreds of modifications and improvements to the system.

## **Draft U.S. Tariff Conversion**

On August 24, 1981, the President requested the Commission to launch an investigation under section 332(g) of the Tariff Act of 1930 for the purpose of converting the Tariff Schedules of the United States (TSUS) into the structure of the HS. In preparing the new tariff, the Commission was to avoid rate changes “to the extent practicable and consistent with sound nomenclature principles.” In addition, the tariff was to be simplified “to the extent possible without rate changes significant for U.S. industry, workers, or trade.” In his guidelines on the conduct of the investigation, the President, among other things, directed the Commission to reflect units of

quantity in metric terms, continue existing statistical subdivisions, solicit public comments, and hold public hearings. Responsibility for the conduct of the investigation was assigned to the Commission's Office of Tariff Affairs and Trade Agreements.

Over the next two years, the Commission released drafts of the converted chapters for public comment. The drafts included cross-reference tables showing the derivation of the then-current tariff and statistical provisions to the converted schedule. The Commission held several hearings and received 270 written comments from interested parties and government agencies.

In an effort to simplify the tariff and eliminate illogical and outdated categories, the Commission draft contained literally hundreds of proposed rate changes. Some resulted from combining tariff categories at trade-weighted average rates; others were based on a preponderance of trade, in the case of a small trade category being combined into a larger category. The Commission would not propose modifying a rate for which there was yearly trade of over \$5 million—separate rate lines would be retained in those cases. Rate changes for imported goods generating less than \$5 million per year would not be proposed unless an interested party raised a justifiable objection.

The entire draft of the converted schedule was submitted by the Commission to the President on June 30, 1983. Besides the draft Harmonized Tariff Schedule, the Commission's final report included background information, explanations of the conversion, cross-reference tables that showed the TSUS origin of the HS tariff rates, and the Commission's views on the probable economic effect of adopting the converted schedule. The full report weighed 11 pounds.

## **Administration Review and WTO Submission**

Upon receiving the Commission's report and the draft tariff conversion, the Office of the U.S. Trade Representative (USTR) undertook a detailed examination of the draft and proposed a number of modifications, largely to correct oversights and update the draft. The draft proposed many rate changes that necessitated modifying the U.S. schedule of tariff concession obligations under the GATT in Geneva. To proceed with adjusting the HTS, Commission staff from the Offices of Executive Liaison and Tariff Affairs, principally Tariff Affairs Deputy Director Holm Kappler and Terry O'Brien, assisted USTR in preparing the extensive formal notification to the WTO. Messrs. Kappler and O'Brien also aided USTR in the related negotiations with U.S. trading partners, which took several years to complete.

## U.S. Adoption of the HTSUS

Adoption of the new tariff was one of the cornerstones of the Omnibus Trade and Competitiveness Act, enacted in 1988 (1988 Act). The HTS was made effective in section 1217 of the 1988 Act with respect to articles entered on and after January 1, 1989.

Under the 1988 Act,<sup>444</sup> USTR was made responsible for coordinating U.S. policy in relation to the HS Convention, with the Commission and the Treasury and Commerce Departments responsible for formulating positions on technical and procedural issues. USTR adopted a policy that the Commission would take the lead concerning matters involved in modernizing the system and would head the U.S. delegation to the HSC's WCO Review Subcommittee, while Customs would lead the U.S. delegation at the HSC.

Under section 105 of the 1988 Act, the Commission was also responsible for recommending to the President any modifications to the U.S. tariff that were needed to conform the HTS to the international system when amendments were adopted by the WCO. Since enactment, the WCO practice has been to propose amendments every five years. So far there have been five amendments to the international system.

Since the HS was implemented in 1988, the United States has proposed a number of significant amendments to keep the system abreast of technology and trading patterns. These include, among others, new provisions for high-technology ceramic materials, antimalarial commodities, and machines for manufacturing integrated circuits.

## The Success of the HS and the HTSUS

Under section 1216 of the Omnibus Trade and Competitive Act of 1988 (Public Law No. 100-418, August 23, 1988, 102 Stat. 1107–1574), the Commission was required to report on the first year of operation of the Harmonized Tariff Schedule (HTS), as the HS-based schedule became known in U.S. law. The report in Investigation No. 332-274, USITC Publication 2296, dated June 1990, responded to the call for an assessment of the impact of HS adoption by USTR, the U.S. Customs Service, and the Bureau of the Census. Comments from the private sector were also sought and summarized in the report.

According to submissions by the principal agencies concerned, the implementation of the HTS had proceeded without significant difficulty. While some private sector interests complained about tariff treatment for a small number of commodities, the most noteworthy observation was the overall absence of complaints concerning the new tariff schedule.

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<sup>444</sup> Pub. L. No. 100-418 (approved August 23, 1988), 19 U.S.C. 2902, §§ 1201–17.

USTR characterized the HTS as a great success and noted the benefits of comparable trade data for targeting U.S. market access opportunities. The Commissioner of Customs indicated that adoption had alleviated a number of administrative burdens. The Director of the Bureau of the Census stated that implementation of the HTS created the opportunity for developing new techniques in collecting and compiling U.S. foreign trade data.

Internationally, the implementation of the HS by over 200 countries attests to its global approval. Its adoption by virtually all major and minor trading nations has facilitated over 200 preferential trade agreements.

In consideration of his contributions in leading the U.S delegation in the negotiation of the international work and for directing the investigation to convert the TSUS to the HTSUS, Gene Rosengarden received the Presidential Meritorious Executive award.

## The 484 Committee

Under section 484(e) of the Tariff Act of 1930, as first enacted, the Commission, the Bureau of the Census, and the Treasury Department (represented by the U.S. Customs Service) became responsible for establishing and maintaining a product statistical system for imports. It was decided among the agencies that the Commission representative would serve as chair. Before the Tariff Schedule of the United States was enacted, the United States had maintained a statistical system for imports that was independent of the legal tariff. When the TSUS was enacted, it was decided to integrate the two systems by creating statistical annotations to the tariff, because it was then prepared as a tabular arrangement. The United States also maintained an export statistical nomenclature, but it was unrelated to the categories used for imports and was based on the United Nations product nomenclature.

Inserting statistical categories as subordinate extensions of tariff provisions was considered beneficial for obtaining the most complete and reliable reporting of data. The combined schedule relies on the adversarial relationship of the government seeking to protect the revenue and importers seeking to obtain favorable tariff treatment as creating the best opportunity of yielding correct classification decisions.

Under the Omnibus Trade and Competitiveness Act of 1988, the provision was amended (section 484(f)) to give the interagency group authority to address both the import and export statistical schedules and to seek comparability with the domestic production schedule. By agreement among the parties, it was agreed that the import schedule would serve as the basis of the comparable system, given that it was based on a legislated document.

With the adoption of the HS by both the United States and Canada, the 484(f) Committee took the initiative of negotiating an agreement with Canada to amend each of the import statistical systems to cover each country's export statistical requirements and to exchange the data. Implementation necessitated hundreds of modifications to each country's system, but at the same time it created the opportunity for each country to use the other's import data to report exports. In this way, approximately 9 million export reporting documents could be eliminated each year.

The foreign trade statistical program is vitally important to understanding the international trade of the United States. Without detailed statistical categories, one cannot say very much about the trade of goods on a product basis. The agencies responsible for the program are well aware of its importance and attempt to consider petitions for statistical refinement in a favorable light.

**Box 7.2: William Thomas Hart**

A history of the Commission's tariff work needs to include a discussion of the contributions of William Thomas Hart. Bill Hart was a member of the Commission's staff from 1948 to 1996, serving for nearly half the century of the agency's existence. He started as an international trade analyst in the Office of Industries, but he was soon assigned to the area of tariff negotiations. He advised U.S. trade negotiators in all of the principal rounds of multilateral negotiations under the GATT and in bilateral negotiations leading to free trade agreements with Canada, Mexico, and Israel. He and a small staff at the Commission drafted the tariff schedules for Congress to implement the negotiation results.<sup>a</sup>

Hart also provided substantial technical assistance to the deliberations of the U.S. interagency Trade Policy Staff Committee, which prepared documents and materials on trade policies and issues for Presidential consideration. When it came to implementing trade agreements and trade programs such as the Generalized System of Preferences, Hart supervised and double-checked the preparation of the necessary Presidential proclamations and/or executive orders. In addition, his office prepared and updated the tariff schedules that were submitted to the GATT and WTO as the text of U.S. obligations in these international trade organizations.<sup>b</sup>

Hart's last position before retirement was as the Commission's Director of the Office of Executive and International Liaison, the predecessor to the current Office of External Relations. His accomplishments during his career led to the award of the Commission's highest honor, the Commissioners' Award for Exceptional Service. In a rare and telling tribute, he received this award on two separate occasions.<sup>c</sup>

When Hart retired in 1996, Representative Sam Gibbons (D-FL), the former acting chairman of the Committee on Ways and Means and chairman of its Subcommittee on Trade (1981–94), published a tribute to William Hart in the *Congressional Record*. Gibbons cited Hart's "wise counsel and encyclopedic knowledge of events, both large and small, in the field of international trade," which, Gibbons said, were sought out by both government officials and business executives.<sup>d</sup>

Representative Gibbons characterized Hart's advice during negotiations as "invaluable," but considered his "most lasting contributions" to have been made after the negotiations had been concluded. The Congressman was referring to the work of Hart and his Commission colleagues on the production, under very stringent deadlines, of documentation necessary to record U.S. international tariff commitments



and update U.S. tariff schedules. Hart meticulously checked and cross-checked every line of information in these documents to ensure the commitments were accurately represented and new tariff rates properly calculated. In the case of the Uruguay Round, this amounted to almost 2,500 pages of documentation. Representative Gibbons noted that Hart's contributions and the critical support he provided to the agencies responsible for U.S. trade policy were recognized by the President's Trade Representatives from Christian Herter, the first Special Trade Representative, who served under Presidents Kennedy and Johnson, to Michael (Mickey) Kantor, who served under President Clinton.<sup>e</sup>

Bill Hart died on May 28, 2012, in Washington, DC. The Commission news release following his passing concluded: "Mr. Hart's accomplishments will live on in the future successes of the world trading system he loved and to which he gave the very best he had to contribute. We will remember him fondly, and with pride."<sup>f</sup>

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<sup>a</sup> USITC, "In Remembrance: William Thomas Hart," news release, n.d., [https://www.usitc.gov/press\\_room/documents/featured\\_news/hart\\_article.htm](https://www.usitc.gov/press_room/documents/featured_news/hart_article.htm) (accessed June 14, 2016).

<sup>b</sup> Conversation with Terry A. O'Brien, formerly with the Commission's Office of Tariff Affairs and Trade Agreements, June 14, 2016.

<sup>c</sup> *Ibid.*

<sup>d</sup> Representative Sam Melville Gibbons (D-FL, 1963–97), "Tribute to the Career of William Thomas Hart," *Congressional Record* 142, no. 49 (April 17, 1996) E552.

<sup>e</sup> *Ibid.*

<sup>f</sup> USITC, "In Remembrance: William Thomas Hart," n.d.

