Chapter 8
The Tariff Commission in Transition, 1917–74

Photo: The Commissioners and staff of the U.S. Tariff Commission, 1922.

Alfred E. Eckes, Jr.[445]

For 57 years—from its birth during World War I to its redesignation as the International Trade Commission—the U.S. Tariff Commission struggled to establish an identity as a bipartisan, independent, fact-finding agency serving Congress and the Executive on tariff and trade issues. This chapter examines three distinct phases in the agency's evolution—initial efforts to launch the Commission on its fact-finding mission, a second turbulent period of "scientific" tariff making, and a third distinct era in which the Executive mobilized the agency's personnel and resources to support its trade-liberalization agenda. This phase would end in 1974, during the Watergate era, as an assertive Congress took important steps to establish the Commission's independence.[446]

Historians have noted that officials supporting establishment of the Tariff Commission were motivated not only by the desire to enhance a technical understanding of tariffs but by multiple political goals. For the Wilson administration and Congressional Democrats, these included neutralizing public concerns about postwar conditions, such as the dumping of foreign merchandise in the U.S. market, and using a nonpartisan commission of experts to analyze and issue reports on the consumer-welfare costs of tariffs. Democrats also hoped to win over support of progressive Republicans by having the Commission prepare cost-of-production studies. In a preceding chapter, W. Elliot Brownlee concludes that Wilson's goal "remained to move the nation toward a policy of free trade."[447]

Because Wilson's party would lose control of Congress in 1918, and the Presidency in 1920, it is important to consider how key Republicans on the Senate Finance Committee, such as Senators Boies Penrose (R-PA) and Reed Smoot (R-UT), viewed the initial Tariff Commission appointments. They perceived that Wilson's nonpartisan Tariff Commission was not bipartisan

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[446] This chapter presents an overview of Tariff Commission activities from its beginning in 1917 to 1974 when the Commission gained a new name and expanded responsibilities. Space limitations in a volume of this kind prevent a detailed exploration of individual investigations and reports, and a more extensive discussion of individual Commissioners and staff members.

[447] Schnietz, "Democrats' 1916 Tariff Commission," 1–45; Brownlee, "Creation of U.S. Tariff Commission," 116.

or balanced, and was intended to advance the administration's tariff-cutting agenda. They complained that five of the six Commissioners favored low tariffs or free trade, and had supported the President politically. The list of nominees included no high-tariff Republicans, nor did it include individuals with extensive experience in manufacturing or agriculture. Smoot, the acknowledged tariff expert among Senate Republicans, concluded: "Most of them are appointed for political work for the President. I shall have no confidence in any report the Commission will make. Most of them are free traders." In particular, Smoot complained that Frank W. Taussig was a Democrat and a free trader, Daniel Roper a White House political operative, and David Lewis "a lame duck Democrat with socialistic tendencies." Smoot considered William Kent a lame duck, free-trade Republican congressman who had headed and financed Wilson's presidential campaign in California in 1916. William Smith Culbertson was viewed as a LaFollette-sort of Republican, and Edward P. Costigan, a former Progressive Republican, was thought to be a Wilson Democrat.[448]

First Phase: Fact-finding and Research, 1917–22

In April 1917, the Tariff Commission opened for business in temporary quarters with an appropriation of $300,000, and soon moved to 1322 New York Avenue. In 1921 it would take up permanent quarters in the so-called General Post Office Building, located in the block bounded by 7th, 8th, E and F Streets, N.W. [449]

As a wartime austerity move, Congress cut the Tariff Commission's appropriation to $200,000 in 1918, equivalent to $150,000 in 1916 prices. The reduction made it "impossible" for the Commission to hire and retain staff, and to carry on all the work it was intended to do. A year later Republicans in the Senate nearly submarined the new agency. In June 1919, Senator Smoot, who remained critical of Wilson's Commission, succeeded in eliminating the Commission's entire appropriation in committee as a cost-saving measure, but it was restored on the Senate floor with the help of Progressives like Senator Robert M. LaFollette, Jr. (R-WI).[450]

Along with funding issues, the early Commissioners had to resolve internal administrative matters and develop the agency's work agenda. One of the first disputes involved office space. Chairman Taussig decided that he preferred Commissioner Culbertson's office. When the latter

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[448] *New York Times*, "President Names Tariff Commission," March 15, 1917, 12; *Washington Post*, "Attack Tariff Board," March 15, 1917, 2; Reed Smoot Diary, March 15 and April 11, 1917, in RS Papers, Brigham Young University (BYU), Provo, UT. In 1930 voters in Colorado elected Costigan, then a Democrat, to the U.S. Senate.
[449] http://www.gsa.gov/portal/category/21010 (accessed March 6, 2016).
[450] U.S. Tariff Commission (USTC), *First Annual Report of the USTC, 1917*, H. Doc. 65-616 (Washington, DC: GPO, November 15, 1917), 4; USTC, *Second Annual Report of the USTC, 1918* (Washington, DC: GPO, November 26, 1918), 37; *New York Times*, "Discontent under Republican Leaders," July 20, 1919, 38.

declined to move, Taussig simply moved his desk into Culbertson's outer-office and proceeded to conduct business. Culbertson vacated.[451]

Important differences about the Commission's work priorities soon emerged among the Commissioners. Those with close ties to the Wilson administration—Taussig, Roper (and his successor Thomas Walker Page), Kent, and Lewis construed narrowly the Commission's mission to involve only fact-finding. They chose to await specific assignments from the administration and Congress. But, Culbertson and Costigan, the ambitious progressives, perceived the Commission as an instrument of revolutionary tariff reform, a vehicle for "scientific tariff making." They wanted to "determine the commercial policy of this country . . ." and to "bring honor and fame to our Commission." Culbertson envisaged a judicial approach to tariff making. He desired "a system for adjusting tariff rates analogous to that which we now have for the adjusting of [interstate] freight rates." He also wanted the Commission "to assist the President in negotiating commercial treaties . . . ." To this end, Culbertson favored establishing a division within the Tariff Commission to collect information, comprehensively, on international commercial relations.[452]

From Culbertson's perspective, the economic circumstances of World War I presented the newly-created Commission with many promising subjects for investigation. He proposed a series of hearings across the country to focus on issues of "economic preparedness," and he urged that Commission members travel to Japan, Russia and Western Europe to discuss postwar economic adjustments. When the State Department blocked the trip to Japan on grounds that it would "lend color to a belief that we are planning trade rivalries with Japan," Culbertson was indignant. "The rapid changes which are now going on in Japanese economic life should be known and understood by us. Almost daily we hear fears expressed by business men of the rising strength of Japanese industries. If this fear has any facts back of it, it is the duty of this Commission to know them and to be prepared to advise Congress just what the facts are." Culbertson emphasized that "our chief work is to study comparative competitive

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[451] William S. Culbertson (WSC), "Journal," July 25, 1917, in WSC Papers, box 3, Library of Congress (LC).

[452] Taussig and the Democrats shared Wilson's position. The Commission should engage in impartial fact-finding, but not the computation of comparative costs of production. Ida Tarbell quoted Wilson in an October 1916 interview as saying: ". . . there is no such animal . . . the cost of production differs always with management." Link, *Papers of Woodrow Wilson,* 38:333; WSC, "Journal," August 15, 1917, box 3, LC; WSC, "Ventures in Time and Space," LC, Manuscripts Division: unpublished manuscript, 1962, vol. 8, 13. In "Ventures," vol. 7, 2–3, Culbertson asserts that one of his "overall policy objectives" was "to reduce the political element in tariff-making and to render effective permanent machinery which would contribute to the scientific determination of tariff rates in the national interest." Taussig and the Democrats, who had closer personal ties to the White House, resisted this approach. Wilson had been critical of the Interstate Commerce Commission's rate-setting. WSC, "Journal," January 23, 1918, box 3, LC.

strength of industries in this country and abroad." He criticized Chairman Taussig for "indifference or opposition . . . ."[453]

Thwarted in this initiative, the young Commissioner secured a letter of introduction from former President Theodore Roosevelt and traveled on his own to Europe, ostensibly as a "representative of the YMCA," to discuss post-war issues with leaders of Britain and France. At the British Foreign Office, he advanced his own idea for employing costs of production as a basis for determining tariff levels worldwide. He wanted to visit Russia, as well, thinking the Tariff Commission "may be able to do our 'bit' there toward concentrating Russia's liberal sentiment on the solution of our after-the-war trade problems." The other Commissioners cooperated with various government agencies on war activities. Chairman Taussig aided the War Industries Board with price fixing, and then traveled to Paris to assist President Wilson at the Versailles Peace Conference on customs and trade issues. Others assisted with domestic industrial mobilization, postal communications, and food matters.[454]

In retrospect, while wartime circumstances and budgetary austerity limited the Commission's progress with trade fact-finding, the first several years saw several significant accomplishments. With fewer than 100 employees, the agency produced several important studies of enduring significance. These contained major policy recommendations which were later enacted into law. Perhaps the most important for future U.S. trade policy was one on *Reciprocity and Commercial Treaties*, a study comparing European and American experiences with the conditional and unconditional forms of the most-favored-nation (MFN) clause. The principal author was Stanley Hornbeck, a political scientist who later gained fame as chief of the State Department's Division of Far Eastern Affairs during the 1930s. Jacob Viner, one of Taussig's doctoral students and later a prominent international economist, was a co-author. At the heart of MFN treatment is the principle of nondiscrimination among trade partners and the obligation to provide equal treatment to all parties to an agreement. When MFN is unconditional, nations are treated alike whether or not they make reciprocal concessions. When nondiscrimination is conditional, benefits are accorded only to the members who provide reciprocity. The Tariff Commission study urged that the United States pursue a policy of equal treatment to all nations, but it made no specific recommendation on whether to adopt the unconditional most-favored-nation clause.[455]

Other important Commission projects during this initial phase involved assembling, analyzing and publishing information regarding commodities and tariffs, and preparing several specific

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[453] USTC, *First Annual Report* (1917), 19; WSC, "Journal," May–June 1918 , box 3, LC.
[454] WSC, "Ventures," 7:26; WSC, "Journal," August 15, 1917, box 3, LC; USTC, *Second Annual Report* (1918), 35.
[455] USTC, *Reciprocity and Commercial Treaties* (Washington, DC: GPO, 1919). Culbertson thought the Commission's conclusion too cautious and sought a more affirmative endorsement of the unconditional most-favored-nation clause. WSC, "Ventures," vol. 7, 56.

studies on commercial policy questions. A report in 1919 recommended authorizing the establishment of foreign trade zones in which imported products could be repacked or processed for shipment to other countries without payment of duty. Congress later enacted such a provision in 1934. Another early project involved a comparative study of antidumping laws, and evaluation of experiences with the Antidumping Act of 1916. The Commission, incidentally, recommended revising and strengthening the antidumping provisions, and Congress did so in 1921.[456]

Under Taussig and Page the Commission adhered to the basic Wilsonian concept. It acted as a fact-finding and advisory body, ready to place carefully-prepared information before Congress and the Executive. But, it chose not to initiate investigations on its own authority. As Taussig observed later on, the Commission had “sweeping powers of investigation, but no power to change the dot of an ‘i’ in the tariff schedule.” The rationale for an independent agency to conduct such fact-finding work rested in the last analysis on its claim to impartiality and to the belief that staff work in both the Executive and Congress reflected the political convictions of policy-makers. Most of all, under Taussig’s cautious leadership, and that of his successor Page, the Commission avoided political controversies as it prepared for the mission of providing impartial advice and information to Congress and the Executive.[457]

For Culbertson, the impatient, young progressive and enthusiastic exponent of scientific tariff-making, these early years were filled with recurring frustrations. Except for Commissioner Costigan, his older colleagues seemed excessively cautious. They initially opposed an active fact-finding agenda, involving extensive foreign travel to investigate changing competitive conditions—especially in the international chemical industry. Subsequently, the Commission would send staff to Europe and Japan to prepare studies on competitive conditions. Culbertson’s colleagues also rejected his proposal to spend available agency funds and then seek a “deficiency” appropriation in “line with Washington traditions.” Culbertson complained that “timidity” seemed to be the worst enemy of the Commission. He believed that it strengthened the hands of the Commission’s enemies and weakened the hands of its friends. “There are men in the country who are opposed to us,” he commented, “and my notion is that the quicker we tell them to go to hell and carry this matter to the country, the better off the Tariff Commission will be.”[458]

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[456] For a discussion of this early Commission research, see USTC, *Third Annual Report of the USTC, 1919* (Washington, DC: GPO, November 29, 1919), 10–12, and Oscar Ryder, “The United States Tariff Commission, : Its Background and History” (USITC Library: unpublished manuscript, 196?) 38–64.
[457] Taussig, “U.S. Tariff Commission,” 1926, 171.
[458] Frank Taussig, “The United States Tariff Commission and the Tariff,” *American Economic Review* (supplement) 16 (March 1926), 171–181. For Culbertson's comments, see WSC, “Journal,” January 16, 1918, box 3, LC.

Second Phase: Scientific Tariff-Making, 1922–34

If Taussig, the prudent economist, set the tone for Tariff Commission activities in the organizational phase, Culbertson, the ambitious progressive, inspired the second phase, a turbulent 12-year period lasting from 1922 to 1933. Culbertson himself resigned from the Commission in 1925 to take a diplomatic assignment, but his enthusiasm for "scientific tariff making" shaped provisions of the Fordney-McCumber Tariff Act (1922) and subsequent Commission efforts to apply its provisions. During this period the Commissioners battled over Culbertson's activist approach, and the Tariff Commission became for more than a decade an important administrative agency with broad authority to set the tariff rates, subject to presidential approval. It is worth remembering that during this period three presidents—Warren Harding, Calvin Coolidge, and Herbert Hoover—devoted substantial time and personal attention to the Tariff Commission and to tariff issues. They met with Commissioners, and thought carefully about appointments.

But, as Taussig understood, it was not possible for the new Commission to exercise such authority without itself incurring "bitter enmity" and becoming a "battle-ground for hostile partisans." As a result, this first attempt at "scientific tariff making" produced public scandals, a full-scale Congressional investigation in 1926, and finally dismissal, by statute, of all sitting Commissioners in 1930.

This fractious phase in the Commission's history began with Culbertson's behind-the-scenes maneuvering to influence Harding administration trade policy and to write provisions of the Fordney-McCumber Act in 1922. Despite his background as a progressive Republican and a Woodrow Wilson Presidential appointee, Culbertson managed to curry favor with Republican presidential candidate Warren Harding during the 1920 campaign. Having provided speech material and other assistance to the nominee, he gained "entree to the White House and a friendly President." Culbertson lobbied to become the Commission's next Chairman. He failed, but was named Vice Chairman. He took consolation from the fact that President Harding "talked with me oftener than he did with [Thomas] Marvin," the Massachusetts protectionist designated as chairman.[459]

In October 1921, after the House of Representatives passed a tariff revision bill with higher duties based on the concept of American valuation, not foreign valuation as was common practice, Culbertson made his next move. Convinced that tariff-making could be made scientific,

[459] WSC, "Ventures," vol. 8, 3–5. Marvin was previously editor of *The Protectionist*, *A Monthly Magazine of Political Science and Industrial Progress*, published by the Home Market Club of Boston.

the young Kansan approached the White House with his flexible-tariff panacea. This proposal arrived at an opportune moment. The White House faced a dilemma. On the one hand, depreciating currencies abroad presented a threat to some American industries, but the House formulation threatened to antagonize this country's trading partners and to invite retaliation against U.S. exports. Thus, President Harding was looking for suggestions to remove the political teeth from the issue, when Culbertson appeared with his proposal for a flexible tariff. The draft called for giving the Tariff Commission extensive administrative powers to propose tariff adjustments based on differences in conditions of competition. It was presented as an alternative to general tariff revision, and as a way to provide relief to a domestic chemical industry fearful of intense post-war German competition.[460]

After conferring with the entire Tariff Commission and Senate leaders at a dinner meeting, which lasted until midnight, Harding presented the essence of Culbertson's proposal in his December 1921 message to Congress. Thereafter, the President, and, of course, Culbertson, worked closely with Senator Reed Smoot (R-UT), a tariff specialist on the Senate Finance Committee, to defeat House proposals and to effect the elastic tariff.[461]

One important technical change was made. At the insistence of progressives, particularly Senator Irvine Lenroot (R-WI), the new law called for adjusting the tariff according to differences in costs of production, not according to differences in conditions of competition. For Culbertson who had favored this formulation initially but yielded to the counsel of colleagues, the cost-of-production approach presented no obstacle to “scientific tariff making.” In his view Congress did not want detailed costs; instead, “a rough approximation of costs ... is sufficient to enable sound conclusions.”[462]

At the bill signing ceremony, Culbertson's spirits soared when President Harding told him the elastic provisions of this bill “will prove the greatest contribution toward progress in tariff

[460] The “germ” of the flexible tariff idea may have originated with Senator Miles Poindexter (R-WA) who presented a speech on August 3, 1916, calling for a Tariff Commission clothed with rate-making authority similar to that of the Interstate Commerce Commission. *Congressional Record*, August 3, 1916, 12018–23.
[461] *New York Times*, “Harding Proposes Flexible Tariff and Labor Regulation,” December 7, 1921, 1.
[462] In effect, then, under the guise of “scientific tariff making,” the law transferred tariff setting authority from elected generalists in Congress to a panel of appointed tariff specialists subject to Presidential review. In both procedures individuals were obliged to make judgments on the basis of available information. Thomas Walker Page to President Herbert Hoover, October 14, 1929, Subject File, box 280, The Herbert Hoover Presidential Library (HH) , West Branch, IA. Page resigned from the Commission in protest of the narrow comparative cost of production formulation. He later said the “flexible tariff does not deserve . . . serious attention . . . . It is a temporary distortion of tariff practice and may be regarded either as a lamentable mistake or a Gargantuan practical joke, according to your opinion of its original purpose.” He added: “It is a temporary excrescence on our commercial policy and was regarded as such when it was adopted.” Page, “Tariff Making,” 1926, 197.
[462] WSC to William Allen White, August 12, 1922, WSC, box 92, LC; Harding's comment in WSC, “Journal,” September 21, 1922, box 3, LC.

making in this century." It is doubtful that the President fully understood that Culbertson and his progressive allies construed the provision as "the beginning of a system which should fix American tariffs on a judicial basis. From it I hope," Culbertson added, "will ultimately come a system for adjusting tariff rates analogous to that which we now have for the adjustment of freight rates."[463]

The Fordney-McCumber Act (Section 315) ceded to the President authority to adjust individual tariff rates in accordance with definite rules established by Congress. After an investigation and recommendation from the Tariff Commission, the President could increase or decrease any rate by 50 percent if necessary to equalize the differences in costs of production in the United States and the principal competing country.

The new act relieved members of Congress of the need to master burdensome tariff details and deal with the exactions of constituents and lobbyists. Nonetheless, many in Congress—both Republicans and Democrats—questioned the new procedure, noting that Congress had the constitutional responsibility to fix tariffs and that this duty could not be assigned to the executive branch. Senator Smoot persuaded his colleagues to go along with the President's proposal.

The 1922 law made the Tariff Commission "one of the most important and powerful agencies" of the government, comparable to the Interstate Commerce Commission. To cope with the expanded mission, the Commission announced a reorganization which included: the office of chief investigator, the office of chief economist, the legal divisions, commodity divisions, and the secretary. In 1923 the Commission's personnel expanded from 96 to 196, and the agency added an office in the New York Custom House as well as field headquarters for the conduct of foreign investigations in London, England; Berlin, Germany; and Paris, France. In 1925 the Commission would consolidate European field activities at the "Commission's European headquarters" in Brussels, Belgium. The Commission also doubled its office space in the General Post Office Building, taking over the entire third floor, which included a hearing room in 1923. Interestingly, the Commission's champion in the quest for more office space was the same Senator Smoot who attempted to eliminate the Tariff Commission's appropriation in 1919. By March 1923, with President Harding in the White House and several high-tariff Republicans appointed to the Commission, Senator Smoot had warmed up to the agency. As

[463] WSC to William Allen White, August 12, 1922, WSC, box 92, LC; Harding's comment in WSC, "Journal," September 21, 1922, box 3, LC.

chairman of the Public Buildings Commission, an independent agency of the executive branch, he arranged for the Tariff Commission to acquire the additional space.[464]

Emboldened with Harding's support for the elastic tariff, Culbertson, supported by the two other remaining Wilson appointees, Lewis and Costigan, voted to initiate an active program of tariff revision under Section 315, the flexible tariff. At a Commission meeting on March 2, 1923, they voted, with Harding's only two appointees Chairman Thomas O. Marvin and William Burgess opposing, to self-initiate more than 30 tariff adjustment investigations. From Culbertson's perspective, the debate over whether to self-initiate investigations, or to await the filing of applications from parties, was one between the "rigid tariff Republicanism of yesterday and the flexible tariff Republicanism of tomorrow." He wrote in his diary: "Within the Tariff Commission in Washington today there are the shadows of an impending tariff revolution in America. The majority of the members ... are keen to inquire into the costs of production—at home and abroad -- of all the chief commodities mentioned in the dutiable list . . . ."[465]

Not surprisingly, this initiative to take the "tariff out of politics" and place it on a "scientific basis" soon politicized the Tariff Commission. Culbertson believed that he had some Republican support for his activism, particularly from Secretary of Commerce Herbert Hoover. Hoover, Culbertson said, was "more of a rebel on the Tariff Commission controversy even than I am," thinking that "if a vigorous policy ... was not pursued by the President, the tariff controversy would be disastrous to the Republican Party in the next election."[466]

But, President Harding, under pressure from high-tariff domestic interests, took a different view. He personally telephoned Culbertson to urge that actions be postponed until he could meet with the entire Commission at the White House. Culbertson yielded, but insisted that Congress had mandated a new method of tariff-making based on the principle that rates should equalize the costs of production between the United States and competing foreign countries.[467]

That Culbertson and his Commission allies were out of step with the administration's thinking became obvious at the White House meeting on April 20. The President insisted that he be consulted before the Commission self-initiated investigations. This move, Oscar Ryder, a Tariff

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[464] *New York Times*, "Claims Wide Scope in Tariff Revision," October 13, 1922, 34; *Washington Post*, "May Investigate Need for Changes in Tariff," October 27, 1922, 4; USTC, *Seventh Annual Report of the USTC, 1923* (Washington, DC: GPO, December 3, 1923), 2–3, 44–45; USTC, *Ninth Annual Report of the USTC* (Washington, DC: GPO, December 8, 1925), 3–4; Senate Finance Committee, 69th Congress, 1st sess., *Minutes of Tariff Commission*, 24, 139–40; RS, Diary, January 20, 1923, BYU.
[465] Senate Finance Committee, 69th Congress, 1st sess., *Minutes of Tariff Commission*, 22–23; WSC, "Ventures," vol. 8, 21–22.
[466] Culbertson also claimed the support of Theodore Roosevelt, Secretary of State Charles Evans Hughes, and Secretary of Agriculture Henry Wallace. WSC, "Ventures," vol. 8, 22.
[467] Cited in Ryder, "U.S. Tariff Commission," 91.

Commission staff member and future Commissioner, interpreted as “a total defeat for the Culbertson faction's program for the broad use of section 315.” Culbertson’s behavior also angered Senator Smoot, who later intervened with President Coolidge in late 1923 to protest against Culbertson being named Chairman of the Commission.[468]

Controversy over administration of the flexible tariff continued, and intrigue intensified within the Commission. After the March 1923 confirmation of a third Harding nominee, Commissioner Henry Glassie, a Democratic lawyer with ties to the Louisiana sugar industry, Chairman Marvin used his working majority within the Tariff Commission to discourage use of section 315. Of some 600 applications, covering 300 commodities, the Commission initiated only 80 investigations, and over a seven-year period recommended 42 changes in duty—of which the President accepted 33. Of the last group, 29 involved increases in duties, and only four duty reductions. The most widely discussed duty reduction was on a relatively insignificant item, bobwhite quail. Most of the adjustments—up and down—concerned minor items, not controversial ones.

Over the Commission’s long history there have been several moments of passion and personal conflict among Commissioners, but none more intense than an episode that occurred in 1923 when the Commission was evenly divided over trade philosophy. At one meeting, Culbertson criticized a Glassie motion as a “smokescreen.” Glassie retorted that Culbertson was a “liar.” Then, Culbertson flung a tobacco pouch across the table hitting Glassie in the eye. Glassie removed his glasses and started around the table, but other Commissioners stepped between the two to avert fisticuffs.[469]

The most controversial investigation during this period –and indeed during the first half century of the Tariff Commission’s existence—involved sugar, a commodity that represented 17 percent by value of U.S. imports. It involved a number of politically-active interests—including New York refiners who relied on imports from Cuba and Louisiana cane producers. The best connected were domestic beet-sugar growers who could rely on Senator Smoot of Utah to look after their interests. Smoot, an apostle of the Church of Latter Day Saints, and others in the senior leadership of the Mormon Church had extensive sugar holdings. They were determined to maintain the high tariff on sugar enacted in 1922 at a time when Cuba’s producers sought greater access to the U.S. market.

It is not surprising then that the sugar investigation, requested by President Harding in March 1923, thrust the Tariff Commission, and its six Commissioners, into the limelight, and subjected

[468] Senate Finance Committee, 69th Congress, 1st sess., *Minutes of Tariff Commission*, 49–50; WJC, “Ventures in Times and Space,” 8; Ryder, “U.S. Tariff Commission,” 89–94; RS, Diary, December 14, 1923, BYU.
[469] *Oakland Tribune*, “’Liar’ Shouted Missile Hurled in Tariff Row,” June 14, 1926, 30.

the organization to intense scrutiny and political pressures. In early 1923 retail prices doubled, rising to as high as 12 cents per pound. President Harding asked the Tariff Commission to examine whether the higher sugar tariff rates established in the Fordney-McCumber Act (1.76 cents a pound on Cuban raw and 2.20 cents on other sugars) were responsible. The Underwood Tariff of 1913 had imposed a duty of one cent a pound on Cuban sugar, and a full duty of 1.25 cents on all other sugar imports. Harding also wanted the Commission to undertake an extensive inquiry into the costs of sugar production at home and abroad under terms of the flexible tariff provision.[470]

During the sugar investigations the competence of the Commission would be assailed, the lack of collegiality exposed, and the integrity of individual Commissioners impugned. One target was Henry Glassie, whose family held financial interests in Louisiana sugar. At the first public hearing on sugar in January 1924, Culbertson, Costigan, and Lewis challenged Glassie's eligibility to sit on the case, alleging a conflict of interest. Culbertson had raised the issue earlier with President Coolidge, but Coolidge merely informed Glassie that he should "do his duty as he sees it . . . ." Glassie chose to participate in the investigation, saying that he deemed it "nothing less than moral cowardice to refuse to sit in the case." This matter created a bitter schism within the Commission, but Congress sided with Culbertson's majority. It amended the Tariff Commission's appropriations to bar salary payments to any Commissioner participating in a case in which any member of his family had a personal financial interest. His salary cut off, Glassie withdrew from the sugar case.[471]

Lobbyists who represented the domestic beet sugar industry then sought to disqualify Culbertson, who held the deciding vote. Calling attention to the provision that prohibited a Commissioner from engaging "actively in any other business function or employment," they accused Culbertson of neglecting his official responsibilities when he taught one evening each week at Georgetown University.[472]

Anticipating that the Tariff Commission would recommend a reduction in the sugar tariff, Senator Smoot expressed concerns about the composition of the Commission and advised President Coolidge to delay the report until after the 1924 presidential election. According to Culbertson, the President's secretary (chief of staff), Bascom Slemp, requested that the Commission postpone the sugar report. "Intimations were conveyed to me by Mr. Slemp that I

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[470] USTC, *Seventh Annual Report* (1923), 55–65.

[471] Senate Finance Committee, 69th Congress, 1st sess., *Minutes of Tariff Commission,* 168–177, 189; *Boston Globe*, "Tariff Board Deadlocked," January 16, 1924, 8; USTC, *Eighth Annual Report of the USTC, 1924* (Washington, DC: GPO, December 1, 1924), 41–42.

[472] Culbertson offers his interpretation in an untitled memorandum, August 5, 1935, WSC, box 15, LC.

might be given a foreign post and when this play upon my hopes failed, there was an attempt to play upon my fears."[473]

Culbertson refused to delay the sugar report. Instead, on July 31, 1924, the Tariff Commission recommended a downward duty adjustment by a 3-to-2 vote. The Commission majority, composed of Wilson administration holdovers, concurred with the arguments of sugar importers, and favored reducing the duty on Cuban sugar from $1.76 to $1.23 per hundred pounds. So the contentious sugar case arrived on the President's desk in the middle of a presidential election campaign, precisely the situation that the White House sought to avoid. In this instance, the Commission's action not only failed to remove a hot issue from politics, it introduced the issue with a bang into the 1924 presidential campaign. While parties to the investigation lobbied furiously, Coolidge pleased domestic producers, and Senator Smoot, when he requested more information from the Commission and opted to delay releasing the report.[474]

A year later in July 1925, after sugar prices had fallen, Coolidge formally announced his decision to reject the Tariff Commission's report. On that occasion he recommended that farmers diversify production to improve their economic circumstances. In particular, he suggested that farmers grow less wheat and produce more sugar beets.[475]

The controversial sugar report, and the impasse within the Commission, impacted future appointments to the agency and sharpened public scrutiny. Determined to end personal disputes, Coolidge within a year replaced two of the Commissioners who had voted to reduce the duty on imported sugar. The first to go was David Lewis, one of the original Wilson appointees whose term expired in March 1925. With the backing of domestic sugar interests, Smoot worked to block his reappointment, but Senate Democrats strongly backed the Maryland Democrat. Coolidge wanted to appoint a Democrat loyal to the administration, but not Lewis, who had sought election to the Senate in Maryland while serving on the Tariff Commission in 1922. He reportedly offered Lewis the coveted renomination, but with a string

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[473] WSC, "Ventures," vol. 8, 37-38. In May, 1926, Culbertson would testify to a Senate committee that President Coolidge had never tried to influence his actions, but to his surprise Senate investigators would produce a private letter from Culbertson to Costigan alleging that the Coolidge administration had sought to influence the sugar investigation. See *Washington Post*, "Culbertson Shown Critic of Coolidge in Private Letter," May 20, 1926, 1.

[474] The three Wilson appointees—Costigan, Culbertson, and Lewis -- favored reducing the sugar tariff. The two participating Harding administration appointees—Chairman Thomas Marvin and William Burgess—dissented. Glassie did not vote. In accordance with Commission practice at that time, the report was not released publicly until the President issued permission. USTC, *Eighth Annual Report* (1924), 23-28.

[475] USTC, *Ninth Annual Report 1925* , 116-118; *New York Times*, "Coolidge Declines to Reduce Tariff on Sugar Imports," June 15, 1925, 1.

attached: The Commissioner must first submit an open letter of resignation. As Lewis' friends tell the story, Lewis refused, and walked out of the White House, his head held high.[476]

The next Commissioner to leave in April 1925 was Culbertson, the leader of the flexible tariff activists. He was appointed minister to Romania. As his successor, Coolidge named Edgar Brossard, an agricultural economist from Utah, who had served on the Commission staff during the sugar investigation. Senator Smoot strongly urged Brossard's appointment to the President. Brossard's nomination aroused controversy within the Commission, as he had provided information to Commissioners opposed to reducing the sugar tariff. Later Culbertson would assert that President Coolidge had "rawly" rewarded Brossard for "playing with the sugar lobby."[477]

Dissatisfaction with the Tariff Commission led the Senate to undertake a special investigation of the agency in 1926. Senator Joseph Robinson (D-AR), the Democratic leader, demanded a full investigation, alleging that the agency did not function in a bipartisan manner and that in forcing Commissioner Lewis's resignation the Executive sought to subvert the usefulness of the Commission as a fact-finding agency. Robinson also attacked Commissioner Glassie as a "nominal Democrat favoring a high tariff" and held him "responsible for the breakdown of the Commission." Democrats also charged that a strong Chairman (Thomas Marvin), with the backing of other Commissioners, was administering the flexible tariff provision with a protectionist bias, thwarting the intent of Congress.[478]

In an unusual procedure Vice President Charles Dawes then appointed a special committee of five senators to conduct the investigation—James Wadsworth (R-NY), David Reed (R-PA), Robert La Follette, Jr. (R-WI), Joseph Robinson (D-AR), and William Bruce (D-MD). From March 1926 to February 1927 the Senate committee investigated the Commission, reviewed the contents of unpublished reports and minutes of meetings, and heard conflicting testimony from individual Commissioners in 41 sessions. The printed hearings ran 1,461 pages. But the committee did not publish a report or make recommendations.[479]

The Senate hearings exposed disagreements and conflicts among the Commissioners. Indeed, some of the sitting Commissioners suggested questions for members of the special committee

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[476] RS, Diary, November 8, 1924, BYU. For Lewis's perspective, see *Congressional Record*, January 13, 1931, 2047. Costigan refers to this episode, in *New York Times*, "Charges Coolidge with Tariff Plot," January 14, 1926, 1; *New York Times*, "Costigan Resigning, Hits Tariff Board," March 15, 1928, 1.
[477] RS, March 6, 1925, BYU; *New York Times*, "Coolidge Accused of Giving Office to Please Lobby," May 20, 1926, 1; USTC, *Eleventh Annual Report of the USTC, 1927* (Washington, DC: GPO, December 5, 1927), 112.
[478] *Washington Post*, "Senate Takes First Step to Investigate Tariff Commission," March 10, 1926, 4.
[479] *Boston Globe*, "Democrats Demand Limit on Tariff Commission," March 7, 1926, A13; *Washington Post*, "Senate Takes First Step to Investigate Tariff Commission," March 10, 1926, 4; USTC, *Eleventh Annual Report* (1927), 112–13.

to ask their colleagues. Commissioner Alfred Dennis, a Democrat, advised Senator Robinson that Chairman Marvin might attempt to “cloud” the issues with talk about a flawed statute and proposed questions to “pin him down.” Dennis blamed Chairman Marvin and Commissioner Glassie for making the Commission a debating society. They had adopted methods equivalent to discussion of whether an angel could dance on the point of a needle. Former Chairman Page told Senators that the fundamental problem with the Commission lies with the flexible provision which absorbed nearly all the funds and energies of the Commission. He recommended that Congress redraft the agency’s responsibilities to focus on research and tariff information. Page added that the present difficulties also resulted from the fact that “some of the members have been handicapped by personal antagonisms and by lack of experience in the kind of work that ought to be done.”[480]

The hearings produced many unbecoming headlines: “Tariff Commission Members Assailed by First Chairman,” “Coolidge Accused of Giving Office to Please Lobby,” and “Culbertson a Tariff Turncoat.” The last involved the release of private correspondence between Culbertson and Costigan alleging presidential interference with the sugar investigation, and claiming that Culbertson had “turned about face” and been guilty of “self-stultification.”[481]

Several Commission staff members testified, and others commented informally on the situation to members of the Senate committee. In correspondence with members of the Senate, L. B. Zapoleon, an agricultural specialist, complained that usually only two of the Commissioners did the bulk of the work. The rest rarely read reports— “a tedious and trying task . . . .” He added: “For elderly gentlemen who desire a dignified place in the official life of Washington; or for young men of mediocre ability and no great drive, a commissionership is an ideal assignment.” The term of office was 12 years; and he noted that there was no one who can control hours, or criticize them for lack of application, short of actual misbehavior.[482]

The hearings generated a number of negative editorial comments. *The New York Times* stated that the Senate investigation appeared to confirm that the Tariff Commission was “an ineffective and almost useless agency of the Government.” *The Washington Post* said simply “the Tariff Commission has no excuse for existence . . . it should be abolished.”[483]

[480] Alfred Dennis to Robinson, March 26, 1926, Box 139, file 6, Joseph T. Robinson Papers (JTR), University of Arkansas (U-AR), Fayetteville, AR ; Page, February 4, 1925, letter to David I. Walsh, TWP, Box 1, UVA.
[481] *New York Times*, “Tariff Commission Members Assailed by First Chairman,” March 24, 1926, 4; *New York Times*, “Raps Tariff Commission,” April 7, 1926, 9; *New York Times*, “See in Culbertson a Tariff Turncoat,” June 2, 1926, 11.
[482] L. B. Zapoleon to Senator William King, April 7, 1926, Box 140, file 1, JTR, U-AR.
[483] *New York Times*, “A Discredited Commission,” April 2, 1926, 18; *Washington Post*, “The Tariff Commission, March 12, 1926, 6.

President Coolidge and Senator Smoot viewed the Tariff Commission investigation as an effort by Senate Democrats and insurgent Republicans to revive the tariff issue for the next Presidential election. Indeed, Senator Robinson communicated to Coolidge that he would make no further fight on the Tariff Commission if the President would appoint Lewis and not reappoint Glassie. But, Coolidge told Senator Smoot that he would "prefer to resign as President than to appoint Lewis after his past actions" affecting the Commission. While it might appear that the hearings only exposed Tariff Commission problems to the light without bringing significant change, Commissioner Dennis had a different assessment. In January 1927 he congratulated Senator Robinson for an investigation that "accomplished the great good of ridding the Commission of two objectionable members and restoring it to the bi-partisan character contemplated by Congress."[484]

Costigan's criticisms of his Tariff Commission colleagues peaked in March 1928 when he, the last of President Wilson's original appointees, resigned. On that occasion he lambasted both President Coolidge and his three Republican colleagues—Brossard, Marvin, and Sherman Lowell. Costigan claimed that Coolidge had refused to act on decisive evidence warranting lower tariff rates, thus helping "to wreck the commission's usefulness." He described Marvin "as a tireless and fanatical protectionist, known in Washington as a tariff lobbyist for New England protected interests." He accused Brossard of bias and lacking a scientific or judicial mind. Costigan asserted that Lowell, a New York fruit grower and National Grange official, lacked "equipment or special qualifications" for serving as a Tariff Commissioner, and appeared to "vote prejudices rather than facts." Despite a Congressional investigation, Costigan alleged that other public officials and private lobbying interests continued to manipulate the Commission. He urged Congress to postpone existing nominations and to withhold appropriations "until adequate assurances are given that the membership of the Tariff Commission will be safeguarded by law and will conform to the standards of disinterested public service . . . ."[485]

Other Commissioners responded to Costigan's broadside. Chairman Marvin expressed the hope that Costigan would have "greater success and satisfaction in his new enterprises than he achieved as a member of the Commission." Brossard retorted that Costigan's comments were a swan song in his efforts to rule or ruin the Commission. Having failed to sustain his charges before the Senate investigating committee, Costigan found himself "more or less isolated and the subject of ridicule for having made, in public, misleading, unsupported, and unsupportable charges . . . ."[486]

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[484] RS, December 8, 1926, BYU; Dennis to Robinson, January 27, 1927, JTR, box 140, file 1, U-AR.
[485] *Boston Globe*, "Tariff Board is Assailed," March 15, 1928, 1; Costigan, "Tariff Making," 1926, 198–202.
[486] *Washington Post*, "Tariff Board Answers," March 16, 1928, 5.

As the personal tensions and conflicts suggest, the bipartisan Tariff Commission faltered during the 1920s as it tried to administer the flexible tariff. No wonder that former Vice President Thomas Marshall (1913–21) quipped in 1925 that "a tariff commission is just about as valuable as a letter written by an inmate of an insane hospital." He added: "To pretend to organize a commission that will tell the difference in the cost of production at home and abroad, is no more possible than it is for a one-legged man to dance a hornpipe." Another member of President Wilson's Cabinet, David Houston, who served first as Secretary of Agriculture and later as Secretary of the Treasury, also criticized the elastic clause in the mid-1920s. He said that it changed the Tariff Commission "from a fact-finding body to a piece of political machinery. It puts the whole body into politics. The flexible provision is a futile conception."[487]

While many Democrats roundly criticized "scientific tariff making," Commissioner Brossard, the Republican agricultural economist, defended the process. He argued that the unique provision "should be permitted a longer time for trial before it is radically changed." He explained that nothing like the "scientific tariff" had been tried before in the world, and as a result "there were no precedents to guide the Congress in framing the statute nor to guide the Tariff Commission in . . . administering its provisions." Technicians needed training, new procedures evolved by trial and error. To speed up the Commission's work, he proposed to double the number of Commissioners from six to twelve, like the Interstate Commerce Commission. This would allow the Commission to divide up the work. To encourage unanimous, rather than divided, reports from the Tariff Commission, he requested that Congress provide more specific guidelines for conducting investigations, and for it to indicate as definitely as possible what part of domestic industry Congress wanted to protect.

As Brossard and others knew, part of the problem involved the difficulty of defining individual terms in the law such as "costs of production." What were these costs? Did they include costs of transportation? If included, how should they be calculated? In calculating production costs in the United States and abroad, did Congress want the Commission to use weighted average costs? Long-term costs, or short-term? Over what period of time should the Commission seek to make comparisons? Should it compare the costs for marginal producers? In what time period should the Commission seek to "equalize" these costs? These and many other questions, he indicated, required answers before the Commission could implement the law.[488]

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[487] Thomas R. Marshall, *Recollections of Thomas R. Marshall: A Hoosier Salad* (Indianapolis: Bobbs-Merill, 1925), 241–43; David F. Houston, *Eight Years with Wilson's Cabinet* (New York: Doubleday, 1926), vol. 2, 187.
[488] Brossard served on the Commission staff from September 1923 to July 1925, then succeeded Culbertson. Brossard served on the Tariff Commission for 33 years and 6 months to April 1959. Brossard's Comments on Section 315 of the Tariff Act of 1922, undated memorandum [1929?], Edgar Brossard Papers (EB), Utah State University (UTU), Logan, UT.

There were other fundamental problems, involving a costly quest for precise comparisons. Commissioner Dennis, a Democrat who had once worked as Hoover's assistant in the Commerce Department, told his friend the President that the flexible provision had not been able to "escape from its swaddling clothes." The law has confined the Commission's analysis to a meaningless "mathematical formula." Observed Dennis, "Two grains of wheat in two bushels of chaff which when found are not worth the seeking."[489]

In addition, implementation of the law put the Commission squarely in the diplomatic crosshairs. France, and other European countries, objected to cost of production inquiries and obstructed efforts by Commission staff to collect data. [490]

This second chapter in the Commission's history ended with a consensus in Congress to dismiss and reconstitute the entire Commission during the next general tariff revision.

The Tariff Act of 1930

In writing the Tariff Act of 1930, better known as the Smoot-Hawley Tariff, Congress initially displayed little enthusiasm for extending the flexible tariff provision. The bill that emerged from the House of Representatives omitted the provision. But President Herbert Hoover, still devoted to the scientific principle, threatened to veto any tariff bill that lacked a flexible tariff provision. A conference committee eventually acceded to Hoover's wishes. For the President the flexible tariff provision remained a progressive advance, and the most appealing feature of the Smoot-Hawley Tariff. He described it as a "long step" toward a "more scientific and business-like method of tariff revision." In time he thought the flexible provision could "remedy inequalities" and take the "tariff away from politics, lobbying, and log rolling. . . ."[491]

At Hoover's insistence the revised flexible tariff provision contained several important technical changes, intended to make it more effective. But, the changes seemed less significant than Hoover's statement suggested. For instance, lawmakers retained in conference the hard-to-administer "cost of production" formula. They also declined to establish time limitations on Presidential review of Tariff Commission recommendations.[492]

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[489] Alfred Dennis to President Hoover, undated memorandum, President's Subject File, box 296, HH, West Branch, Iowa.

[490] USTC, *Ninth Annual Report* (1925), 18–20. French protest mentioned in Tariff Commission meeting, July 1, 1924. *See*, U.S. Senate, Committee on Finance (Senate Finance), *Minutes of the Meeting of the United States Tariff Commission,* 69th Cong., 1st sess., Document no. 83, 1926, 312.

[491] Hoover consistently supported the principle during the 1929–30 tariff revision. Hoover, *Public Papers of the Presidents: 1929* (Washington, DC: GPO, 1929), items 38, 215, 216, 267, 295; Statement on the Tariff Bill, June 16, 1930, in Hoover, *Public Papers: 1930*, 230–5.

[492] Ryder, *"U.S. Tariff Commission,"* 115–117.

The Tariff Act of 1930, which in modified form remains the basic U.S. tariff law, also reorganized the Tariff Commission and modified some of its functions. The new Commission, like the old, would have six members, not more than three of whom could be members of the same political party. The terms would be six years, not 12 as originally provided, and the salary raised to $11,000 per year from $7,500. Moreover, the 1930 Act added the language that “No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions. . . .” As previously, the President would designate a Chairman and Vice Chairman annually.[493]

The 1930 statute reiterated with only minor changes the Commission's broad fact-finding authority, now redesignated Section 332. Two provisions of future importance, which had been included in the 1922 Fordney-McCumber Act, were redesignated Sections 337 and 338. The first, concerning unfair practices in import trade, would evolve over time into a powerful instrument used against infringement of U.S. intellectual property rights. Under the 1922 Act the President was authorized, but not required, to impose increased duties on offending goods. Alternatively the President might exclude them from entry. In 1930, Congress eliminated the penalty duty and authorized only an exclusion order “whenever the existence of any such unfair method or act shall be established to the satisfaction of the President . . . .”[494]

Section 338 related to foreign discrimination against U.S. commerce. Unlike the more recent Section 301, a provision authorizing retaliation against unjustifiable and unreasonable foreign import restrictions, Section 338 pertained to foreign discrimination invalidating unconditional most-favored-nation treatment.[495]

Reappointing the Tariff Commission

Eager to prove that this second experiment with “scientific tariff making” could succeed, President Hoover searched for qualified individuals willing to serve on the Commission. A number of talented people turned him down, apparently fearful of the Senate confirmation process. He succeeded in persuading a longtime friend and former diplomat, Henry Fletcher of Pennsylvania, to chair the Commission. Fletcher had no tariff expertise but he had extensive diplomatic experience in economic matters, including tours as Ambassador to Chile, Mexico,

[493] USTC, *Fifteenth Annual Report of the USTC, 1931* (Washington, DC: GPO, November 30, 1931), 115.
[494] USTC, *Fifteenth Annual Report* (1931), 122–23; USTC, *Sixth Annual Report of the USTC, 1922* (Washington, DC: GPO, December 4, 1922), 61.
[495] USTC, *Fifteenth Annual Report* (1931), 124–25.

Belgium and Italy, as well as Under Secretary of State. This appointment kindled hope in Europe that Fletcher and Hoover would use the flexible provision to roll back high-tariff rates.[496]

In addition, President Hoover re-nominated three other commissioners: Alfred Dennis (D-MD), his former deputy; Lincoln Dixon (D-IN), a former congressman who had served on the Ways and Means Committee; and Edgar Brossard (R-UT), Senator Smoot's friend. He also nominated Thomas Walker Page (D-VA), a former commissioner and chairman, and John Lee Coulter (R-ND), the Commission's chief economist. This reconstituted Commission exhibited geographical, political, and philosophical balance, as well as considerable experience. President Hoover noted that four of the nominees (Brossard, Coulter, Dennis, and Page) were former college professors with economics backgrounds who also had served at the Tariff Commission.

Establishing a precedent, the Senate Finance Committee voted, against the wishes of Chairman Smoot, to hold public hearings on the nominations. Despite vigorous questioning of Fletcher and the others, only Brossard faced serious opposition. Senators Joe Robinson (D-AR) and Pat Harrison (D-MS) concentrated their fire on Brossard, describing him as "the special advocate of the sugar interests ... and the greatest source of friction within the Commission." They held Brossard partly responsible for the "disrepute" of the old Tariff Commission. Edward Costigan, who had been elected to the Senate but had not yet taken office, urged his new colleagues to reject Brossard, his former Tariff Commission colleague. Brossard had a "biased mind and subserviency to outside interests . . . ." Nonetheless, Brossard was confirmed 45 to 36 with eight Democrats from sugar producing states voting for the nominee.[497]

For four years after passage of the 1930 Act, the flexible tariff continued to drive the Commission's agenda. Under Fletcher's leadership, the Commission expedited the tariff adjustment process. In slightly more than a year, it completed 39 flexible-tariff investigations, recommending no change in 17 instances, reductions in 15, and increases in six. Another involved both a decrease and an increase. While this work was impressive when measured against the 44 reports issued in seven years under the 1922 Act, critics claimed that the Commission was moving hastily with inadequate accounting procedures and sloppy analysis.[498]

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[496] *Washington Post*, "Fletcher is Appointed Head of Tariff Board," August 23, 1930, 1; *New York Times*, "Naming of Fletcher Gives Europe Hope," August 25, 1930, 1.

[497] *New York Times*, "Hoover Adds Three to Tariff Board," September 17, 1930, 3; *Washington Post*, "Senate Fights Over Brossard for Tariff Job," January 13, 1931, 1; *New York Times*, "Confirms Brossard to Tariff Board," January 14, 1931, 12; *Congressional Record*, January 13, 1931, 2050.

[498] Fletcher resigned in November 1931, and then the pace slowed under his successor Chairman Robert O'Brien. Altogether, the Commission had completed 69 investigations from 1930 to the end of 1934. Of these, 31 recommended no duty change, 21 favored decreases, 12 recommended increases, and 5 contained both increases and decreases. Many of the recommendations for no change rested not on cost of production comparisons but on foreign exchange problems or lack of comparability between imports and domestic production. Ryder, "U.S. Tariff Commission," 121–124.

Third Phase: Struggling for Independence, 1934–74

Passage of the Reciprocal Trade Agreements Act in 1934 signaled a quiet revolution in U.S. trade policy, and inaugurated for the Tariff Commission a third distinct, but less visible, phase in its history. While Congress would continue to rely on the Commission for impartial technical work and tariff information, the executive branch would involve the Commission staff and Commissioners in trade negotiations and policy decisions that sometimes appeared to conflict with the agency's role as an impartial factfinder. Overwhelmed with the problems of promoting recovery from a global depression, Congress initially acquiesced to this arrangement. But after World War II Congress would challenge the Tariff Commission's participation in trade policy and negotiations. Growing constituent dissatisfaction with the trade liberalization process would produce more fundamental changes in the 1974 Trade Act. For the Tariff Commission, the Act brought a name change to better reflect its responsibilities—the U.S. International Trade Commission—and provisions to help establish the agency's independence from what Congress perceived as executive branch domination.

The 1934 Reciprocal Trade Agreements Act initiated a remarkable new phase in U.S. tariff history—one focused on executive-branch tariff-making. From 1789 to 1922, Congress had written the tariff, and in the legislative environment, domestic interests often succeeded in their efforts to promote upward tariff revisions. Congress found that it could not adjust duties selectively without succumbing to pressures for sweeping adjustments. Experience with "scientific tariff making" in the 1920s also seemed to demonstrate that a bipartisan Tariff Commission was no more capable than Congress in separating tariff issues from politics, and in effecting timely, selective tariff adjustments. As a result, Congress and the Executive were unable to resist constituent pressures for undertaking another general revision after the 1928 elections. And, this 18-month tariff-writing exercise, led by Senator Reed Smoot and Congressman Willis Hawley, proved divisive and disruptive, highlighting once again the difficulty that the legislative branch encountered institutionally in overhauling the tariff in a responsible way.[499]

Reflecting the general mood, the Democratic Platform in 1932 called for major changes to trade and tariff policy. It recommended "a competitive tariff for revenue with a fact-finding tariff commission free from executive interference, reciprocal tariff agreements with other nations,

[499] For a classic study of Congressional tariff-making, see Elmer Eric Schattschneider, *Politics, Pressures and the Tariff* (New York: Prentice-Hall, 1935).

and an international economic conference designed to restore international trade and facilitate exchange" (emphasis added). [500]

In 1933 the new Secretary of State, Cordell Hull, opted to take the lead in fashioning a new trade policy. Hull was a veteran of many Congressional tariff battles including the Underwood Tariff of 1913 and the Smoot-Hawley Tariff of 1930. He had served 18 years on the Ways and Means Committee, and two on the Senate Finance Committee before becoming Secretary of State in March 1933. He had observed and criticized the dysfunctional tariff process. As Secretary of State he persuaded President Franklin D. Roosevelt to seek, and Congress to authorize as an emergency measure, a delegation of authority to the Executive to raise or lower tariffs in bilateral agreements by up to 50 percent for three years.

In administering this trade liberalization program, the State Department retained overall control. President Roosevelt authorized establishment of the Executive Committee on Commercial Policy in 1934. It was an interagency group composed of representatives at the assistant secretary level and chaired by the State Department, for the purpose of developing and coordinating U.S. trade policies. Three Tariff Commissioners participated in the work of the Executive Committee on Commercial Policy. Responsibility for trade negotiations was lodged in the Committee on Trade Agreements, a group of technicians from the State Department and other agencies who coordinated strategy and supervised negotiations. A Tariff Commissioner sympathetic to the trade liberalization program served as a voting member of the policy-making, interagency trade agreements committee. Individual Commission staff members served on subordinate, interagency committees and assisted in actual negotiations with foreign representatives. In particular, the Tariff Commission staff had the key supporting role in assembling statistical data and in providing product specific information for members of the interagency committees involved with trade decisions. As in Congressional tariff making, decision-makers relied on the Tariff Commission as an authoritative source of comprehensive and impartial information.[501]

Finally, another member of the Tariff Commission, deemed supportive of Hull's reciprocal trade program, chaired a third important committee, the Committee on Reciprocity Information. This group held public hearings and heard from interested persons about possible tariff concessions in trade negotiations. Commissioner Page, the Vice Chairman of the Commission, served in that capacity until his death in 1937. Commissioner Henry Grady, a former State Department

[500] http://www.presidency.ucsb.edu/platforms.php.

[501] Commissioner Brossard, a Utah agricultural economist, complained that the interagency process was controlled by "New-Deal partisan negotiators on the Trade Agreements Committee [who] have not wanted the findings of the bipartisan scientific fact-finding Tariff Commission to in any way control and thus to limit in any way the reductions in rates they may have desired to make in any agreement." See Brossard's undated memo on Extension of RTAP-HR 6556 [1948], Box 24, Brossard Papers, USU.

economist in charge of the trade agreements division, then succeeded him as committee chairman. When Grady returned to the State Department in 1939 to replace Sayre as assistant secretary of state, his position as chairman of the Committee for Reciprocity Information was taken by Commission Vice Chairman Oscar Ryder, himself an economist and participant in the interagency trade liberalization process.[502]

The Tariff Commission during the 1930s

Passage of the Trade Agreements Act in June 1934 transformed the Tariff Commission's workload. In preparation for bilateral negotiations the Senate Finance Committee asked the Commission to collect and analyze statistics on U.S. import and export trade with 39 countries, accounting for 92 percent of U.S. total trade. By 1934 the Tariff Commission was so immersed in the trade negotiations process that it prepared more than 1,000 reports for interdepartmental committees. The Agricultural Adjustment Act, approved in 1935, added another responsibility. Whenever the President had reason to believe that articles were being imported so as to render ineffective or materially interfere with government agricultural programs, the Commission was required to conduct an immediate investigation to determine the facts.[503]

The Commission's staff expanded about 10 percent in 1934 and 1935 to accommodate this increased workload. The Executive Committee on Commercial Policy, chaired by the State Department to develop and integrate procedures, closely monitored the Tariff Commission's work. "Practically all the important finished work of the Tariff Commission . . . so far as it affects changes in our foreign commercial relations" was referred to this committee "for consideration and for advice to the President . . . ."[504]

Not only did Tariff Commission technical specialists participate in trade agreement negotiations, but after completion of each agreement the Commission usually issued a report explaining the agreement and providing digests of information regarding products on which concessions had been made. The Canadian agreement was summarized and analyzed in four volumes; the 1938 agreement with the United Kingdom in eight volumes.[505]

Allocation of Commission resources to support Hull's program of reciprocal negotiations displaced and crowded out the Commission's attention to some other tariff matters. For

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[502] Francis Sayre to Henry Grady, January 6, 1937, Francis Sayre Papers, Box 4, FDR Library; Cordell Hull to President Roosevelt, May 21, 1942, Official File 60, FDR; USTC, *Eighteenth Annual Report of the USTC, 1934* (Washington, DC: GPO, January 2, 1935), 10–13.
[503] USTC, *Nineteenth Annual Report of the USTC, 1935* (Washington, DC: GPO, January 3, 1936), 18–19.
[504] USTC, *Eighteenth Annual Report* (1934), 11–12.
[505] USTC, *Twenty-Third Annual Report of the USTC, 1939* (Washington, DC: GPO, December 1, 1939), 4.

example, effective administration of the flexible tariff provision ceased with passage of the reciprocal trade program. The 1934 Act stipulated that Section 336 (the flexible tariff) did not apply to products included in trade agreements.[506]

Also, the Tariff Commission gave little attention to intellectual property issues. Initial efforts to enforce Section 316 of the 1922 Act and its successor Section 337 of the Tariff Act of 1930, relating to unfair acts of competition and unfair acts in import trade, resulted in little activity. From 1930 to 1968 this intellectual property infringement provision was seldom utilized. There were both judicial and policy impediments. In the *Amtorg* case (1935), the Court of Customs and Patent Appeals had reversed a Tariff Commission recommendation for an order excluding phosphate rock from the Soviet Union on the grounds that process patents were not protected under Section 337. Uncomfortable with unfair trade cases, the Commission requested that Congress transfer authority to the courts and the Federal Trade Commission, so that it could focus on its "primary functions," described as collecting "complete and scientific information concerning tariffs and the effect thereof upon the industry and revenue of the United States for the purpose of aiding the President and Congress." The Commission's annual report observed that "neither the members of the Commission nor its staff is selected for the purpose of dealing with such technical legal questions." From 1935 to 1968 the Commission received 66 complaints, but made only three affirmative determinations. [507]

In 1933 President Hoover had nominated Robert Lincoln O'Brien (R-MA), a prominent Boston journalist, to succeed Fletcher as Commission chairman. As a young man O'Brien had served as President Grover Cleveland's personal secretary, and thus acquired considerable knowledge of the government process. As it turned out, O'Brien was no high-tariff Republican. Indeed, he worked well with Roosevelt and Hull, and would be reappointed as Chairman of the agency annually until his retirement in 1937. As an advocate, O'Brien provided significant, bipartisan backing for the trade liberalization program, testifying and making speeches in support of Hull's program. In 1936, he even tried to persuade the Republican National Convention to endorse the reciprocal trade program, but was dismissed as a turncoat and Roosevelt henchman.[508]

On matters of concern to the Roosevelt administration, O'Brien sought and received guidance from the Executive Committee on the timing of investigations and publication of results. In May

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[506] USTC, *Eighteenth Annual Report* (1934), 61. The last section 336 report, according to former Commissioner Bruce Clubb, involved brooms made of broom corn. Bruce Clubb, *United States Foreign Trade Law* (Boston: Little, Brown & Co., 1991), vol. I, 109. *See also*, USTC, *Forty-Sixth Annual Report of the USTC, 1962*, TC Publication 77 (Washington, DC: GPO, January 1963), 29–30.

[507] *In Re Amtorg Trading Corp*., 22 C.C.P.A. 558; 75 F.2d 826 (1935); USTC, *Nineteenth Annual Report* (1935), 12–14. Clubb, *United States Foreign Trade Law*, 1:615–712.

[508] *Washington Post*, "U.S. to Regain Its World Trade, Hull Promises," March 24, 1935, 2; *Washington Post*, "President Picks O'Brien Again for Tariff Job," May 31, 1936, M15; *New York Times*, "Republican Shift on Tariff Is Urged," April 11, 1936, 6; *New York Times*, "Republicans and the Tariff," April 13, 1936, 16.

1934, for example, he agreed to postpone reports on chocolate and cocoa imports until after Congress had completed action on the trade agreements bill. Where Commission investigations touched delicate foreign policy issues, the Executive Committee did not hesitate to intervene. In June 1935, for instance, the committee insisted that the Tariff Commission not publish its recommendations for import restraints on Japanese pottery and sun goggles.[509]

Similarly, the Executive Committee blocked a proposed Section 338 investigation in December 1933. When Vice Chairman Page brought up "the important consideration of the discrimination against American trade resulting from British imperial preference," the group made reference to "serious practical objections to ... retaliation." It quickly became evident that the Commission's approach to this provision was subject to the approval of the Executive Committee on Commercial Policy. In effect, the executive branch would decide when to consider retaliation against foreign discriminations incompatible with unconditional most-favored-nation treatment.[510]

Operating behind the scenes, the State Department also sought to influence the administration's selection of Commissioners. A key factor was the prospective nominee's support for the reciprocal trade program. The archival record shows that the Roosevelt administration evaluated potential nominees with control of the Commission in mind. For instance, in January 1937, when Assistant Secretary of State Francis B. Sayre, the policy-maker directly responsible for the trade agreements program, learned about a prospective vacancy on the Commission resulting from the mortal illness of a Commissioner, he contacted a former State Department economist, Henry Grady, then in California, and recruited him for the post.

> I need not point out to you how vitally important the work of the Tariff Commission is to the success of our trade agreements program. As you well know, a Tariff Commission which did not see eye to eye with us, or which should swing away from our program, would be fatal to the success of our undertaking.

Grady received the nomination, and would replace Thomas Page as chairman of the important Committee on Reciprocity Information. [511]

The Roosevelt administration, required by terms of the 1930 law to appoint no more than three Democrats to the six-member Commission, sought supportive Republicans like Chairman Robert O'Brien. It explored the idea of appointing only four of the six commissioners so as to

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[509] Executive Committee on Commercial Policy (ECCP) meetings, May 12, 1934, June 27, 1934, and December 12, 1934, 611.0031 Exec Comm 799, Record Group (RG) 57, National Archives and Records Administration (NARA), Washington, DC; USTC, *Nineteenth Annual Report* (1935), 30–34.
[510] ECCP meeting, December 12, 1934, 611.0031 Ex Com/799, RG 57, NA.
[511] Sayre to Grady, January 6, 1937, Francis Sayre Papers (FS), Box 4, Franklin D. Roosevelt Library (FDR) Hyde Park, NY.

save money and assure a favorable balance. Thus, when the term of protectionist agricultural economist John Coulter expired in June 1934, the administration left the seat open for some 18 months until December 1935 when Roosevelt nominated Dana Durand, an economist and former head of the U.S. Census Bureau. Durand, a Republican who supported the Hull trade liberalization program, served as the Tariff Commission's chief economist from 1930 to 1935. He was strongly recommended to the White House by Democrats on the Tariff Commission who considered Durand a sound economist who would "not obstruct" the administration's trade policies. Indeed, in 1936 when Commissioner Page, who chaired the Committee on Reciprocity Information, became ill, Durand was asked to preside over the hearings. The administration did not want the long-serving Commissioner Brossard to chair the hearings, because the Republican was considered "an extreme protectionist and hostile to the Hull program."[512]

On occasions Secretary Hull personally pressed the Commission candidacies of others known to favor the Trade Agreements program. He sought appointments for Oscar Ryder, a participant in the interagency trade network, and Lynn Edminster, one of Hull's personal staff aides. He wrote Roosevelt in May 1942:

> Mr. Ryder has been cooperating well with the State Department, especially as it relates to carrying forward our commercial policy and trade agreement undertakings. We have some extreme high tariff people in the Commission. It becomes important . . . to avoid . . . domination from that source.

Edminster he praised as having "exactly our views and mine with respect to commercial policy, and has supported them quite effectively."[513]

During World War II the Tariff Commission functioned for much of the period with only four commissioners. The Chairman (Raymond Stevens in 1941, Oscar Ryder in 1942–45) sat on the Executive Committee on Commercial Policy and the Committee on Trade Agreements. The Vice Chairman (Ryder in 1941, Lynn R. Edminster in 1942–45) presided over the Committee on Reciprocity Information and also sat on the Committee on Trade Agreements. They actively supported the Hull reciprocity program. The two Republican members (Edgar Brossard and Dana Durand) filled positions on less-sensitive committees, such as one involving cooperation with the American Republics and another with the coordination of statistics. George McGill, a

[512] Roosevelt to Hull, December 2, 1935, Official File 60A, FDR Library; Raymond Stevens to Roosevelt, March 3, 1937, Official File 2628, FDR Library.
[513] Hull to Roosevelt, May 21, 1942, Official File 60, FDR Library.

former Democratic Senator from Kansas, joined the Commission in August 1944, and spent some of his time contemplating a return to the Senate.[514]

During the military conflict the Commission provided extensive assistance to war agencies such as the War Production Board, the Office of Economic Warfare, the Office of Price Administration and the War Department. Annual reports for the period indicate that the amount of work provided to various interdepartmental committees by Commissioners and staff was “very substantial.”[515]

By 1944 postwar economic and trade issues had become a major emphasis of Congress and the administration. From December 1944 to April 1945 “the entire available staff” worked on a major report to the Senate Finance Committee on probable U.S. import trade in the postwar period. Later in 1945 the Commission focused on providing technical information for the next series of reciprocal trade negotiations.[516]

As attention turned to postwar planning and renewal of the tariff reduction program in the postwar period, circumstances compelled the Roosevelt and Truman administrations to give renewed attention to Tariff Commission appointments. Control of the Commission remained critical to the State Department’s goal of creating an international trade organization and cutting tariffs world-wide to construct the foundation for a stable and durable peace.

Problems emerged in 1945 when reciprocal trade was up for renewal in Congress. As the price for a two-year extension President Truman pledged not to “trade out” U.S. industry and he agreed to cut tariffs selectively only after careful study had shown that the reduction would not cause serious injury to any essential domestic industry. But, many in Congress did not trust the interdepartmental Committee on Trade Agreements to implement the pledge. The legislators had more confidence in the independent, bipartisan Tariff Commission, an agency with considerable experience assessing trade problems. Moreover, its six commissioners were Presidential appointees subject to Senate confirmation, not obscure civil servants beyond the direct reach of Congress.[517]

In the 1946 Congressional elections Republicans won control of both houses of Congress. During subsequent hearings to extend the reciprocal trade program in 1947, Congress complained that the executive branch was subordinating the domestic economy to “extraneous, and perhaps overvalued, diplomatic objectives.” To address Congressional

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[514] McGill, who had little prior experience with tariff issues, ran unsuccessfully for re-election to the Senate in 1948 and 1954.
[515] USTC*, Twenty-Seventh Annual Report of the USTC, 1943* (Washington, DC: GPO, January 1, 1944), 17.
[516] USTC, *Twenty-Ninth Annual Report of the USTC, 1945* (Washington, DC: GPO, January 3, 1946), 2.
[517] John Leddy note, June 30, 1945, Record Group 43, NARA; Arthur Vandenberg-Eugene Millikin joint statement, February 7, 1947, Brossard Papers, USU; Senate Finance Committee, 80th Congress, 2nd sess., Report 1558, 3–4.

complaints that the State Department and its interagency committees were blocking efforts of domestic industries to invoke escape clauses in reciprocal trade agreements from previous tariff concessions, President Truman agreed to issue Executive Order 9832 on February 25, 1947. It directed the Tariff Commission to investigate complaints either on its own motion or at the request of the President and make appropriate recommendations.[518]

In 1948 Congress also required that the Tariff Commission calculate peril points (the lowest tariffs necessary to avoid serious injury to domestic industry) on prospective concessions, so that future tariff reductions would not cause or threaten serious injury to domestic industries. Congress also stipulated that the Tariff Commission restrict its activities to fact-finding, and it prohibited Commissioners and staff from "participating in any policy decisions of the executive branch, or in the negotiation of trade agreements." Tariff Commission employees would no longer be eligible for membership on interdepartmental committees. The Commission was, according to the Senate Finance Committee report, "a legislative agency." The Commission's annual report in 1949 used somewhat different terminology, calling the Tariff Commission an "independent agency . . . ."[519]

Officials at the State Department responsible for trade negotiations continued to fear that they might lose influence at the Commission. As a result of the compromises with Congress described above to win extension of the reciprocal trade program in 1947 and 1948, the State Department considered it critically important for the executive branch to appoint Commissioners supportive of trade liberalization. "Effective operation of the trade-agreements program," said Winthrop Brown, director of the Office of International Trade Policy, "requires the recess appointment, as soon as possible, of a strong and independent supporter of the program . . . ." Without the appointment of an individual "who would act vigorously in the interests of trade-barrier reduction and independently of future reappointment possibilities," State feared that doubts about "the lowest advisable [tariff] rate will be resolved by fixing rates which contain too much margin of safety. . . ."[520]

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[518] USTC, *Thirty-First Annual Report of the USTC, 1947* (Washington, DC: GPO, January 2, 1948), 11–12. Beginning with the 1935 bilateral trade agreement with Belgium, the administration had included a circuit-breaker mechanism, the escape clause, to prevent third countries, such as Japan, with low labor costs from reaping the principal benefits of reciprocal trade agreements. Domestic industries complained to Congress about ineffective enforcement of this provision. See, Alfred E. Eckes, Jr., *Opening America's Market*, for a detailed discussion, 220–27.

[519] Senate Finance Committee, 80th Congress, 2nd sess., Report 1558, 5; USTC, *Thirty-Second Annual Report of the USTC, 1948* (Washington, DC: GPO, January 3, 1949), 1–3; USTC, *Thirty-Third Annual Report of the USTC, 1949* (Washington, DC: GPO, January 3, 1950), 1. For the extent of Tariff Commission involvement with interdepartmental committees prior to July 1948, including trade negotiations in Geneva, see USTC, *Thirty-First Annual Report* (1947), 3–17.

[520] Winthrop Brown to Undersecretary Robert Lovett, July 20, 1948, International Trade, Box 59, RG 43, NA.

State Department fears of a runaway, protectionist Commission proved unfounded. From 1945 to 1951, when Congress amended the trade act [Trade Agreements Extension Act of 1951] to limit the Commission's discretion in escape clause proceedings, the Tariff Commission routinely dismissed petitions for relief. It rejected fourteen of twenty-one petitions without initiating an investigation and without offering the complainants a formal hearing or written explanation. And when the Commission did conduct a full investigation, it frequently made negative findings. The Commissioners who combined regularly to reject complaints or render negative determinations all had been active in the trade agreements program—namely, Commissioners Ryder, Edminster, and Durand. The one Commissioner who frequently dissented from the majority position was Brossard, who criticized the majority's disposition to prejudge in secret without a public hearing. When the Tariff Commission did recommend relief to domestic industries, the State Department usually advised the President against extending relief. Eugene Stewart, who represented dozens of domestic industries before the Commission over a career that extended some four decades, observed: "So strong was the influence of the State Department throughout the entire history of the Commission that an affirmative determination and recommendation for relief by the Commission had but a slight chance to [take] effect."[521]

The history of Commission involvement with the escape clause and injury findings in anti-dumping cases (beginning in 1954) has been discussed elsewhere. However, for all post-World War II administrations the increasing use of the escape clause by import-sensitive industries appeared to present a distinct challenge to trade-liberalizing, foreign economic policies, and so increased the significance of Tariff Commission nominations. Nonetheless, the Commission generally avoided the limelight and negative press coverage that it had generated in the 1920s. Syndicated columnist Marquis Childs would write: "The Tariff Commission is like a fly preserved in amber, defying time and the elements; kept perfectly intact through the passage of the years." [522]

In 1953 the Eisenhower administration inherited the trade liberalization program, and soon had to deal with House Republicans who wanted to reorganize the Commission and add a seventh Commissioner. The Senate balked at this partisan effort to pack the Commission and substituted a tie-breaking provision as a compromise. In future escape clause decisions, when the Commission was equally divided, the President might regard the findings and

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[521] USTC, *Thirty-Fifth Annual Report of the USTC, 1951* (Washington, DC: GPO, January 8, 1952), 11–13; Alfred E. Eckes, Jr., *Opening America's Market: U.S. Foreign Trade Policy since 1776* (Chapel Hill: University of North Carolina Press, 1995), 225–27; Eugene L. Stewart, oral history interview, September 18, 1996, for ITC Historical Society, Alfred E. Eckes, interviewer, 9.

[522] On Commission injury assessments in escape clause and antidumping cases, see Eckes, *Opening America's Market (1995)*, 219–77; Eugene L. Stewart, "Notes of an Historical Overview of the United States Tariff Commission," unpublished manuscript, March 20, 1996, 10–70; *Washington Post*, "Pressures on the Tariff Commission," September 9, 1953, 12.

recommendations of either group of Commissioners as the findings and recommendations of the Commission. To further assuage opponents of trade liberalization, President Eisenhower named Brossard, the longest serving Commissioner, as Chairman, and made two high-tariff appointments—former Connecticut Congressman Joseph Talbot and Walter Schreiber, an agricultural "nut" specialist.[523]

Having restored some balance on the Commission between those who favored trade liberalization and those who desired greater protection for domestic industry, the White House began to worry that a protectionist Tariff Commission might undercut the President's liberal trade philosophy. A critical appointment came in the spring of 1954 as the Eisenhower administration contemplated negotiations with Japan. Eager to extend tariff concessions to Japan in order to facilitate its economic recuperation and to bind it to the "free world," the White House staff expressed concern that the resignation of one low-tariff Democrat would soon give high-tariff advocates, led by Chairman Brossard, a majority on the Commission. This might produce "peril point findings . . . so restrictive that negotiation may be next to impossible." To address the problem, the President nominated Glenn Sutton, a University of Georgia economist, and the Senate Finance Committee, chaired by Senator Walter George, of Georgia, a supporter of the reciprocal trade program, promptly confirmed him.[524]

The White House was not disappointed. In peril point votes involving proposed concessions to Japan, the high-tariff advocates on the Commission lacked a majority, and the Commission split 3-to-3 on 64 statistical classes. On 44 of these items, the Trade Agreements Committee then voted to offer lower rates of duty than recommended by the high-tariff Republicans. Lower duties were offered the Japanese on chinaware, power transmission chains, cutlery, wood screws, tuna packed in oil, crab meat, cotton towels, wool blankets, imitation pearls, cork tiles, cigarette lighters, footwear, and fishing tackle—all import-sensitive items. On many of these items domestic industries subsequently sought escape-clause relief from increased imports, or filed dumping complaints, often without success. As Noel Hemmendinger, who frequently represented Japanese respondents in trade cases, observed: "My general recollection is that

[523] *Washington Post*, "GOP Seen Dropping Tariff Control Plan," August 1, 1953, 2; USTC, *Thirty-Seventh Annual Report of the USTC, 1953* (Washington, DC: GPO, January 6, 1954), 1–2.
[524] Joseph B. Phillips to C. D. Jackson, June 19, 1953, DDRS; Robert Macy to Gabriel Hauge, April 27, 1954, White House Central File, Official File, box 241, Dwight D. Eisenhower Papers (DDE), DDE Library.

none of that [Japanese] trade was badly hurt by whatever remedies, if any, the President adopted."[525]

The Kennedy and Johnson administrations also worked to maintain executive influence over the Commission and to prevent it from becoming a protectionist, or Republican opposition, outpost. Although the Kennedy administration would set the decade's trade agenda with its call for multilateral GATT negotiations to continue the tariff liberalization process, Kennedy himself was more sensitive to the problems of declining and noncompetitive industries than some of his predecessors. As a member of Congress from Massachusetts, he had frequently supported restraints on textile imports and other products. And, as President he approved several Tariff Commission recommendations for escape clause relief from domestic producers of carpets and rugs, sheet glass, and cotton typewriter-ribbon cloth. But, these were exceptions—perhaps intended to appease high-tariff supporters in Congress.

President Lyndon Johnson was devoted to tariff reduction and freer trade. In 1967 his administration had responsibility for concluding the Kennedy Round of multilateral trade negotiations at a time of rising Congressional dissatisfaction with import competition. Johnson and his advisers recognized that success in the Kennedy Round negotiations, and their ability to implement agreements made, depended on having a Tariff Commission sympathetic to the trade expansion program.

In their Tariff Commission appointments, Kennedy and Johnson adhered to the pattern established in the Roosevelt and Truman presidencies. Insofar as possible, they avoided known protectionists, and high-tariff Republicans, while designating perceived free-traders and administration loyalists as Chairman and Vice Chairman. Like other Presidents before him, Kennedy also found the Commission a useful place to station friends and supporters—such as Dan Fenn, a White House staff member and friend from Boston, and James W. Culliton, a former Harvard University professor. Both served effectively on the Commission.[526]

In their appointments both Kennedy and Johnson avoided Republicans with ties to Congress. Instead, they named "independents" to satisfy the statutory requirement for balanced

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[525] Carl D. Corse, Chairman, Interdepartmental Committee on Trade Agreements, to President Eisenhower, February 15, 1955, WHCF, Official File, Confidential, Box 91, DDE Library; U.S. Department of State (USDOS), *General Agreement on Tariffs and Trade Analysis of Protocol (including Schedules for Accession of Japan*) (Washington, DC: USDOS, 1955); Noel Hemmendinger, oral history interview, March 20, 1996, for the ITC Historical Society, Bruce E. Clubb, interviewer, 4. In a 1958 report, the U.S. Tariff Commission noted an increasing number of protests from domestic producers about Japanese imports. USTC, *Postwar Developments in Japan's Foreign Trade* (Washington, DC: GPO, March 1958). The report did not address any connection between increased imports and U.S. tariff concessions.

[526] *Washington Post,* "Senate Confirms Bullitt Nomination," February 22, 1963, A2; *Washington Post*, "Kennedy to Name Fenn to Tariff Commission," August 25, 1963, A5.

appointments. Kennedy replaced Allen Overton, an Eisenhower Republican, with Culliton, a political independent and dean of the University of Notre Dame's College of Business Administration. Johnson also appointed independents, or simply left vacancies unfilled. In place of Schreiber, the "nut expert," he nominated the first woman commissioner, Penelope Hartland Thunberg, a political independent and free-trade-oriented economist. To succeed Talbot, a former Republican Congressman, who died in office in 1966, he selected Bruce Clubb, a young attorney of Native American ancestry from Blackduck, Minnesota. Clubb, although a registered Republican, had no Congressional ties. He had been active in Johnson's 1964 re-election campaign. It is significant to observe that for all but five months of President Johnson's 62 months in office, the Tariff Commission operated without a full component of commissioners.[527]

To chair the Tariff Commission, the Kennedy and Johnson administrations selected free-traders whose support for the trade liberalization program had been repeatedly proven. Two of these were former Commission staff members, Ben Dorfman and Paul Kaplowitz. Both had strong ties to the State Department trade liberalization network. Dorfman, the Commission's chief economist, had undertaken a number of international assignments, and participated as a member of the U.S. delegation in four rounds of GATT negotiations. In choosing Dorfman, Kennedy ignored the senior Democrat on the Tariff Commission, Glenn Sutton, an Eisenhower appointee, strongly backed by Senator Eugene Talmadge (D-GA), a member of the Senate Finance Committee. Perhaps for this reason, Congress declined to act on the nomination in 1961, and Kennedy chose to make a recess appointment for Dorfman and then named him chairman.[528]

As his successor, Dorfman recommended Kaplowitz to the White House. Kaplowitz, previously the Commission's General Counsel, also had impeccable internationalist credentials, having

[527] Former Kennedy aide Ralph A. Dungan explained to President Johnson that no Vice Chairman had been designated for the Tariff Commission since 1961 "principally because the eligible commissioners during this period have been either Republicans and/or protectionists whose views on tariffs and foreign trade would be out of line with administration policy." Dungan to President Johnson, White House Official File, FG 297A, September 15, 1964, Lyndon B. Johnson Papers (LBJ), LBJ Library, Austin, TX. The Johnson White House was troubled when Clubb joined with Culliton and Sutton to criticize the anti-dumping code negotiated in the Kennedy Round, while only Metzger and Thunberg defended it. Senate Finance Committee, 90th Cong., 2nd sess., *International Antidumping Code*, 96–120. To win easy Senate confirmation of the free-trade Thunberg for a Republican slot, it is significant that Johnson first renominated the high-tariff Talbot, a former Republican Congressman.

[528] *New York Times*, "Senate Stalling on Tariff Choice," September 8, 1961, 4; *New York Times*, "Senate Clash Has 2 Casualties," September 29, 1961, 21; and *New York Times*, "Dorfman to Head Tariff Commission," November 1, 1961, 25.

served as chief draftsman of the General Agreement on Tariffs and Trade in 1947, and then having participated in several subsequent rounds of multilateral trade negotiations.[529]

Kaplowitz in turn picked his successor, suggesting another insider and proponent of trade liberalization, Stanley Metzger, a former State Department legal advisor and professor of law at Georgetown University. "It is important," Kaplowitz told the Johnson administration, "to have a knowledgeable and capable person in the chairmanship at this time, and Metzger is someone who would command respect and exercise control. He is a free trader." But, Metzger, who was bright, abrasive, and a onetime member of the National Lawyers Guild, had his share of critics. Organized labor was hostile to Metzger's trade philosophy, and at a stormy confirmation hearing, Senator Vance Hartke (D-IN) grilled Metzger on the recently negotiated Kennedy Round antidumping code. However, the law professor was confirmed.[530]

Soon, Metzger had the White House battling with the Finance Committee. He complained to the White House that the Tariff Commission was a "floating crap game." The new Chairman claimed that he lacked a working majority, and he urged the White House to nominate economist Bernard Norwood, previously chairman of the interagency Trade Staff Committee and an independent. Metzger assured the White House that Norwood was "absolutely dependable." Then, when a majority of the Tariff Commission—but not Johnson appointees Metzger and Thunberg -- voted to criticize the proposed international Antidumping Code as conflicting with domestic law, White House aides prevailed upon Johnson to rush the nomination forward. Said White House aide De Vier Pierson to Johnson, "we could head off adverse decisions on the Antidumping Code by filling . . . slots with [Tariff] Commissioners who have a liberal trade philosophy. I believe it is in our interest to do so."[531]

Senate Finance Committee Chairman Senator Russell Long (D-LA), who had succeeded the more supportive Harry Flood Byrd (D-VA) in January 1966, surmised that Metzger was maneuvering to stack the Commission with free trade enthusiasts. "It was a case of the Executive usurping

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[529] *Washington Post*, "Kaplowitz to Head Tariff Commission," December 19, 1965, A6; Paul Kaplowitz file, in John W. Macy personnel files, LBJ Library; biographical information from USITC, *Commissioners of the United States Tariff Commission and United States International Trade Commission,* Office of the Secretary (Washington, DC: USITC, November 1988).

[530] Stanley Metzger file, in John W. Macy Papers (JWM), LBJ Library. House Ways and Means Committee Chairman Wilbur Mills (D-AR) had suggested and endorsed the nomination of Stanley Metzger to the Commission. Paul Kaplowitz also commented on Mills' "high regard for Metzger, presumably because he often testified before Mills' committee." Mills to Lawrence F. O'Brien, October 1, 1965; Joseph Califano to John Macy, October 11, 1965; James Marsh memo of Kaplowitz comments, June 2, 1967, all in Metzger File, JWM, LBJ Library.

[531] Metzger also sought to recruit fellow law professor John H. Jackson from the University of Michigan, but he declined. Jackson to Metzger, April 29, 1968, Metzger file, JWM, LBJ Library. Senate Finance Committee, 90th Cong.,2nd sess., *International Antidumping Code*, 96–120; John W. Macy, Jr., to President, February 16, 1968, Metzger File, JWM; and DeVier Pierson to Johnson, March 4, 1968, White House Central File, Legislation/TA6, box 155, both in LBJ Library.

the functions of the Congress," Long complained, and he blocked Norwood's appointment, refusing even to hold a Finance Committee hearing on the nomination. In time his old Senate friend and colleague, President Johnson, personally negotiated a compromise. Long agreed to confirm another administration nominee, Hershel Newsom, master of the National Grange and a loyal supporter of the trade expansion program, for a second Commission vacancy. In return, Norwood withdrew, and the President nominated Bill Leonard, one of Long's aides on the Finance Committee staff. Long's nominee, Leonard, served nearly nine years, while Johnson's candidate, Newsom, died in office 19 months after taking his oath.[532]

Metzger continued to make controversial suggestions until his resignation in July 1969. Early in the Nixon administration, the departing Chairman told reporters the Tariff Commission has "not enough to do. There's not enough of a job here for a chairman—let alone five other commissioners." Indicating that two hours of concentrated work daily would be sufficient to perform his duties, the Chairman complained: "There's not enough to do. And it's not mind-stretching. It's basically dull." The agency was engaged in little more than a "garbage function." Staff members spend time "polishing the brass." He proposed that the Commission shed its quasi-judicial functions—involving antidumping injury determinations and other unfair trade cases—and that Congress eliminate five of the six commissioners. Instead, he suggested the Tariff Commission focus on fact-finding and research, becoming "the foreign trade counterpart of the Bureau of Labor Statistics." The White House took note of Metzger's recommendation, but concluded that "it is almost certain to provoke congressional resistance" from Senate Finance Committee Chairman Long and others.[533]

The war for control of the Tariff Commission between Congress and the Executive did not end with Commissioner Metzger's departure. It is arguable that this fascinating, third phase of executive branch efforts to influence the agency came to a close some five years later in 1974 with enactment of the Trade Act of 1974.

After the Kennedy Round of multilateral negotiations concluded in 1967, resistance grew in Congress to additional trade negotiating authority. The steel, textile, and footwear industries, among others, experienced rising import competition, and Congress considered legislation imposing import quotas. In its report on the Trade Act of 1970, the Senate Finance Committee reiterated its view that the Tariff Commission was a "permanent independent nonpartisan body" for providing technical and fact-finding assistance to Congress and the President for use in determining trade policies. While observing that trade and problems involving trade were at

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[532] Senate Finance Committee, "Nominations of Will E. Leonard, Jr., and Herschel D. Newsom," hearings, 90th Cong., 2nd sess., October 9, 1968, 9.
[533] Business Abroad, "Digging Up More Trade Facts and Forget Policy," *Business Abroad*, February 1969, 23–24; *Life,* February 7, 1969, 28, described Metzger as "a hero among bureaucrats;" Peter M. Flanigan to H.R. Haldeman, July 22, 1969, DDRS.

a historic high point, the Finance Committee noted that the Commission's staff had declined from 278 to 200 since conclusion of the Kennedy Round, and that staff was well below the average of 315 in the five-year period 1931–35 when imports were lowest. Noting that the Bureau of the Budget was severely cutting back on the Commission's budgetary requests, the committee believed that:

> The only way to preserve the strict 'independence' of the Commission from unwarranted interference or influence by the executive branch is to place its budget directly under the control of the Congress.[534]

The 1970 Trade Act died on the floor when Congress adjourned. But, the Nixon administration would seek new trade negotiating authority for another multilateral round to deal with non-tariff barriers and unfair trade practices. The administration, weakened from the Watergate revelations, obtained much-coveted fast-track authority, which would avoid the problem of Congressional amendments to a negotiated pact. But the agreement came at some cost to the executive branch. It had to involve Congress in the negotiating process from beginning to end in return for the much sought up-or-down vote soon after submission of the pact.

The Senate Finance Committee used these negotiations to strengthen the independence of the Tariff Commission, which all agreed should be renamed the U.S. International Trade Commission in light of the growing importance of non-tariff barriers. But, in executive mark-up the Finance Committee also demanded, and achieved, budgetary independence for the Commission, and authority to represent itself in legal proceedings. Previously, it was required that the Department of Justice represent the Commission. These provisions gave the U.S. International Trade Commission a unique amount of independence within the government framework, limiting the ways that outside parties could dominate the Commission's fact-finding and investigations. Senate Finance Committee Chairman Long had insisted on these changes; he considered the Commission an "arm of Congress."

The committee's overall analysis of the circumstances that produced this outcome is told in the Senate Finance Committee's report. It emphasized:

> "The Tariff Commission . . . is a permanent, independent, nonpartisan agency whose principal function is to provide technical and fact-finding assistance to the Congress and the President upon the basis of which trade policies may be determined. The Committee strongly believes in the need to prevent the Commission from being transformed into a partisan body or an agency dominated by the Executive Branch. For this reason, many of

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[534] Senate Finance Committee, *Social Security Amendments of 1970*, to accompany H.R. 17550, 91st Cong., 2d sess., Report No. 91-1431, (1970), 281–282.

> the amendments offered in this bill with regard to the Commission are directed at strengthening its independence."[535]

The 1974 Act also lengthened the terms of Commissioners from six years to nine. In 1978, the 95th Congress changed the procedure for designating the Chairman and Vice Chairman. Previously, the Chairmanship had rotated every 18 months. Now Chairmen and Vice Chairmen would serve for two-year terms (each from a different party), and they must be succeeded by a person from a different party. This legislation vested strong administrative authority in the Commission's Chairman.

The statutory changes of 1974 were important milestones in the agency's history. As the Tariff Commission metamorphosed into the U.S. International Trade Commission during the 1970s, it increasingly became a quasi-judicial agency subject to court review. The agency also retained fact-finding duties that had evolved significantly from its conception in 1917. Future historians would be in the best position to assess whether the statutory changes, enacted in 1974, had succeeded in strengthening the agency's independence and in protecting the integrity of its investigations from pernicious influences.

[535] Senate Finance Committee, *Trade Reform Act of 1974*, 115–18.

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Part IV
Investigations