

AMERICA'S CUSTOMS INQUISITION¹

BY SENATOR ÉDOUARD NERON

FRENCH exporters are protesting vigorously, and with excellent cause, against the vexatious inquiries that American Treasury agents are making in this country. Their protests find an echo in the press, and have been brought before our Government by our leading commercial and industrial organizations.

The Fordney-McCumber Tariff Law of September 1922, instead of basing ad valorem duties on the value of merchandise in the United States, as had been done for several years, returned to the pre-war practice of basing them on the value of goods in the country of origin. The Law provides that 'if any person manufacturing, producing, selling, shipping, or consigning merchandise to the United States fails, at the request of the Secretary of the Treasury, or an appraiser, or person acting as an appraiser, or a collector, or a general appraiser, or the Board of General Appraisers, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the market value or classification of such merchandise, then while such failure continues the Secretary of the Treasury, under regulations prescribed by him, (1) shall prohibit the importation into the United States of merchandise manufactured, produced, sold, shipped, or

consigned by such person, and (2) may instruct the collectors to withhold delivery of merchandise manufactured, produced, sold, shipped, or consigned by such person. If such failure continues for the period of one year from the date of such instructions, the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in case of forfeited merchandise.'

Such investigations are not new so far as the United States is concerned. It maintained a secret service of this kind, with headquarters in the Avenue de l'Opéra, before the war. Indeed, a special commission, established after the Franco-American Commercial Treaty of 1908 was signed to adjust tariff controversies between the two countries, inquired into the activities of these agents, as a result of formal complaints presented to it by French exporters of perfumery, porcelain, lace, and furnishing-goods.

But the inquisition complained of before the war was not expressly provided for by statute. The United States Tariff Act of October 1913 merely imposed a surtax of fifteen per cent ad valorem on merchandise imported into the United States from firms refusing to give the required information; while the present law prohibits such importation and makes goods brought into the country in violation of this prohibition liable to forfeiture.

Nor are these penalties merely Platonic. When a firm of metal-goods

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manufacturers at Strassburg refused to submit its books to the examination of American Treasury agents, the authorities at Washington forbade the importation of any articles manufactured or exported by that company or on its account. We certainly cannot tolerate such exclusion of our merchandise from American markets as this implies.

What is the procedure of these agents? A letter of protest addressed to the American Consul at Marseille by the Board of Trade of that city states that certain merchants there had been disagreeably surprised at receiving a call from a United States Treasury agent, who insisted upon verifying the prices on the invoices of certain goods shipped to America, upon comparing those prices with the prices of goods sold in France, and upon convincing themselves that the sums received by the selling firm were the same as the sums indicated in the invoices to their American customers. These agents were not satisfied with mere verbal assurances on these points. They demanded the right to copy the invoices of goods sold to American and French customers and of checking them by actual remittances. After having visited the exporting houses, the American agents visited certain factories in Paris and elsewhere to check the invoices still further.

These inquisitions, explicitly provided for in the American Tariff Law, are not, however, the only ones against which our exporters have protested. The American Government does not limit itself to trying to prevent fraud. American Consuls have addressed an elaborate questionnaire to business houses in their respective districts that deal regularly with America. As the president of the Paris Chamber of Commerce pointed out in a letter to the American Consul General in France,

the nature of this questionnaire is such as to create the impression that it was designed to serve as a still further check upon the data gathered by American Treasury inquisitors.

Last of all, our merchants have protested indignantly against another practice — that of buying a quarter- or a half-page of advertising-space in our large city dailies, and even in country newspapers, for the purpose of inviting employees of jewelry houses selling to American tourists to betray the secrets of their masters. These advertisements are inserted by the American Jewelers Protective Association in order to prevent smuggling, and offer rewards reaching a maximum of fifty thousand dollars, or nearly a million francs, for information leading to conviction.

The Marseille Board of Trade points out, fairly enough, in its protest, which has been endorsed by many other commercial bodies, that such practices by the agents of a foreign government in France, and enforced by coercive pressure which it is not necessary to qualify, violate all precedents of commercial courtesy among nations. The copying of confidential records constitutes an intolerable prying into business secrets unauthorized by international law. Every nation has an unquestionable right to take whatever measures it thinks necessary within its own territories to prevent customs frauds, but the United States goes beyond the bounds of reason when, in order to prevent such frauds, it sets up in another country a veritable trade-inquisition and openly invites the employees of foreign business-houses to betray the secrets of their masters. . . . It is certainly intolerable that the representatives of a foreign government should exercise inquisitorial rights in this country that our own government authorities do not possess.

Other countries, particularly Great Britain, Switzerland, and Scandinavia, take the same attitude that we do. The United States Government has suggested that they appoint their own appraisers to ascertain prices paid by American purchasers. British manufacturers indignantly rejected this proposal and refused bluntly to disclose the data demanded. According to rumor, the authorities at Washington have threatened to prohibit the importation of all products coming from British houses who refuse to submit to this inquisition. Switzerland has not replied to America's suggestion. In Scandinavia, the Fifth Congress of the Merchants of Denmark, Sweden, and Norway adopted unanimously a resolution protesting against the appointment of American Treasury agents commissioned to inspect their books for the purpose of learning the prices they receive for their goods and their methods of production.

The American Consul General at Paris has tried to justify the activities of these agents in his correspondence with the Chamber of Commerce of that city. He pointed out that, of a total of one and a half million separate consignments shipped to the United States by the merchants of the entire world during 1924, only fourteen hundred had been made the object of inquiry abroad. The Chamber of Commerce replied that the number of cases did not affect the principle; that it could not admit the right of the United States to make a single investigation in France which our own Government was not authorized to make. That body added that it was unworthy the dignity of a free country to permit foreigners to exact information from its merchants and manufacturers that American merchants and manufacturers would certainly refuse to furnish French officials.

The American Consul General also emphasized the strictly confidential character of these investigations. But can a government guarantee the absolute trustworthiness of its agents? The Consul stated, further, that if the present system proved impossible of application the United States would have to resort to the imposition of ad valorem duties based upon the value of goods in the American market.

Should that measure be adopted, the present investigations would of course be suspended as unnecessary. But our trade would suffer severely. As the Paris Chamber of Commerce points out, when an importer buys goods he must know exactly how much those goods will cost him. Now the American importer would never have that information, because prices might rise or fall between the time when he placed his order and the time when the goods passed customs. Furthermore, it is exceedingly difficult to appraise values in an open market, and they would often be fixed arbitrarily. That would bear heaviest of all upon articles of luxury which have no regular quotations.

Our own Government has expressed its views upon this subject on several occasions. In April 1924 the Foreign Minister wrote to the Chamber of Commerce at Paris as follows: 'The French Government has not failed to call the attention of the Government of the United States to the illegality under French law of the measures provided in the Fordney Bill, which are furthermore contrary to the principles of international law. I can only advise your members, therefore, to refuse any demands of this character that are presented to you, in case they are repeated.' More recently our Foreign Office has considered measures of retaliation, such as directing French agents to investigate the financial

standing of American banks having branches in France. But the Paris Chamber of Commerce disapproved such action on the ground that reprisals toward a friendly nation would, by placing France in the same position as the United States, deprive her of all right of protest, and possibly start a series of retaliatory acts on both sides which would injure the trade of one country as much as that of the other. Such measures should be taken only as a last resort.

Furthermore, the Minister of Commerce and Industry, in a circular addressed to our Chambers of Commerce in May 1924, stated that 'agents of the administrative departments of other countries making investigations nominally economic, but actually of a character that may not be approved by the French Government, cannot be considered authorized representatives of foreign Powers.' He added that his attention had been called to the right claimed by certain agents of the treasuries of other countries to examine the books of French firms, and that since 'this proceeding was absolutely illegal, he would recommend that the Chambers of Commerce advise their members to refuse unequivocally any such demands made upon them.'

We see, therefore, that the Government of France and the Governments of other nations have repeatedly disapproved the investigations conducted by American Treasury agents abroad, and have advised their merchants and manufacturers not to consent to them. Nevertheless, the practice continues because our exporters fear lest they be excluded from the American market. But they wonder if some method cannot be worked out that will reconcile the interests of both parties. Several suggestions have been made in this direction.

The former Underwood Tariff dis-

pensed with all such inquiries abroad, but provided that exporters should certify under oath, before an American official, and subject to certain penalties in case of perjury, to the accuracy of their invoices. In 1913 a French Cabinet Committee examined the question of amending our laws to enable this to be done, but arrived at no positive decision.

The Paris Chamber of Commerce has proposed that the American Ambassador be notified by our Government that the exequaturs of any agents of his country who insist upon examining the books, invoices, or other business papers of French merchants or manufacturers will be canceled, and that any agent without an exequatur who commits this offense will be expelled from French territory. Those would be extreme measures, to be adopted only as a last resort. The Chamber has also suggested that the Government of the United States might prevent customs fraud by exercising the right to purchase at the declared valuation any goods that it suspected of being under-invoiced. We should point out, however, that France formerly exercised that power and abandoned it on account of the serious abuses it invited. The same abuses would inevitably arise sooner or later in the United States.

The president of our National Association of Jewelers and Goldsmiths has made another suggestion to the effect that the American Treasury might obtain its information regarding valuations by applying directly to our Chambers of Commerce, instead of to exporters and manufacturers, and that the latter might make their own investigations. This proposal was discussed not long ago at a meeting of the presidents of the various associations of industries producing and dealing in luxury goods. But it was opposed on

the ground that it merely shifted the investigation to a new authority, while the members refused to recognize the right of anybody to inquire into their private business.

Last of all, one of our principal commercial reviews, *Les Échos*, advocates a concerted official protest by the principal Powers interested, and recommends retaliatory measures if it does not receive consideration from the American Government. This action has also been recommended by a general meeting of French merchants and manufacturers. At that meeting a representative of our Department of Commerce proposed two measures: first, that something be done immediately to render more tolerable the activities of American Treasury agents, such as arranging to have information furnished by a Central Committee instead of by individual firms. Next he proposed that France, in coöperation with the other European Powers, bring friendly pressure to bear upon the Government of the United States to withdraw these agents. He thought that our friends across the Atlantic would realize, if joint action were taken in the matter, that their own interests demanded concessions on their part.

The question must be discussed on a purely business basis, putting all sentimentality aside. If our efforts at an amicable settlement prove futile, we should be forced as a last resort to take retaliatory measures, especially against American goods entering our country. We should be quite justified in doing so if we could show that American exporters were treated with decidedly more consideration in France than French exporters are in America.

In fact, this difference in treatment goes far to explain why the value of North American products imported into France has almost doubled since 1913, rising from \$146,000,000 to \$281,000,000, while French exports to the United States have remained almost stationary, being only \$147,000,000 to-day as compared with \$136,000,000 before the war. American duties are very high, and practically exclude many of our products. For example, our exports of handmade lace to the United States have fallen off by one half. It is easy to see that these high rates of duty, plus the inquisitorial procedure of American agents in France, represent a very serious handicap to our trade.

A PARIS CHAUFFEUR'S STORY¹

BY PROFESSOR ACHILLE MESTRE

[This article records an actual conversation. Its author is Professor of Constitutional Law of the Faculté de Droit of Paris University.]

'I BEG pardon, Professor, I can't take a tip. I attended your lectures last year, and I shall present myself for examination to you the first of next year.'

I studied more carefully the face of the chauffeur who had brought me home, and recognized under his professional cap one of my students. He was a very young fellow of attractive appearance, who seemed much amused at the adventure. In recognition of his courtesy, I invited him to dinner the next day.

'I trust you will permit me to leave a little early,' he said, 'for I shall have to report for duty.'

What follows is a literal record of our conversation the next evening.

'I wish to become a lawyer. Law interests me. But how was a young man like me, the son of a poor officer without independent means and the oldest of five sons, to live in Paris away from his family? No one can imagine the miracles of economy and ingenuity of which my mother is capable. I could never have brought myself to ask aid from my parents. After I had finished the secondary school, I learned from one of my relatives how to run an automobile, and took out a driver's license. It was one day when driving

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that the solution of my problem suddenly popped into my mind. I said to myself: "I'll take my law course at Paris all on my own, without costing anyone a sou — I'll get a job as chauffeur." And the idea worked out all right.'

'But how do you get time to study and attend your courses?'

'Well, let me tell you how I arrange my day. I run my taxi every night from 10 P.M. to 7 A.M. It is not so tiresome as you might imagine, when you have good meals and sleep well. After my work is done I go to my lodgings and change my clothes, and then get a hearty breakfast at a little hotel in the neighborhood. Promptly at half-past eight I am at the Law School, feeling fresh and ready for work. Since I always get to the classroom early, I invariably find a good seat and my notes are complete. At noon, after my three lectures, I leave the school, eat a good dinner, and go to bed, sleeping until 8 P.M.'

'But how do you prepare for your examinations?'

'I'll have to admit that I've been a little rushed this year. But I've a good memory. More than that, my notebooks are complete and up to date. They are a great assistance. There are many times during the night when I have a long wait at Montmartre or other places. At such times I park near an electric lamp and review my notes and do other studying. Just before the end of the term I stop work for a month and cram for examinations.