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The Economics of Trade Barriers

F. Eugene Melder
Clark University

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THE ECONOMICS OF TRADE BARRIERS.

F. EUGENE MELDER*

In recent decades and especially in recent years the fact of the increased economic interdependence of the world has become well recognized. Also a group of economic problems, known popularly as trade barriers, has been pressing for therapeutic treatment, although there is considerable divergence of opinion as to their best solution. The background of these problems is found in the fact of man's growing control over natural forces and his inability to successfully accommodate his political and economic institutions to that fact.

In the course of the six-thousand years of recorded history one trend of importance for the present discussion stands out. It is the gradual development of a world-wide economy, in which the humans of all geographical sectors are interdependent in some degree. To trace the history of this growing interdependence would be to describe man's gradual conquest of the natural barriers to human intercourse, the water hazards of oceans, rivers, and lakes, the topographical barriers of mountains and forests, and the communication barriers of space. It would be the story of man's successes, in turning the principal water and space barriers into marine and aviation highways for his commerce, in converting the stored energy of the sun and the minerals of the soil into the steel rails and rolling stock of his railways, his surfaced highways and motor cars, and his various wires or wireless communications. Every new success in reducing the time and cost of travel, transport, and communication was a step toward increased interdependence. Each such improvement encouraged the exchange of more commodities and services, as a result of which we see that, today, no nation of the world can prosper and supply its needs by depending wholly on its own resources and industries. This very interdependence made possible industries which could not exist without drawing upon many widely separated sources of materials. For example, we could not have the modern automobile if we did not obtain the non-ferrous al-

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* Department of Economics and Sociology, Clark University, Worchester, Mass.

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loys of other parts of the world, and other products of foreign nations which are necessary to its manufacture. The trend has been constantly toward a planetary economy. Man's early steps toward such an economy were slow, but in recent centuries his pace has been more rapid, until in the last century progress in the technology of land, water, and air transport has laid the foundations of a true world-economy. The world has been shrinking at an unprecedented rate and this fact is of profound significance to economy as well as politics.

Bearing in mind these facts of shrinking space and economic interdependence, we turn now to a consideration of some of man's behavior in response to these changes. This behavior is generally considered to fall within the categories of politics and economics alike, and may be briefly described by the common name, trade barriers. This behavior is represented by the creation of artificial impediments to trade, which replace in some degree the natural geographical hindrances to human intercourse which man has removed in his development of the technology of travel, transport, and communication described above.

Historically, legal trade barriers as we think of them today, accompanied the rise of modern nation-states as a feudal economic order gave way to an economic order of "commercial capitalism." The chief source of large fortunes in the new order was the carrying trade and activities of the merchants. Trade barriers consisting of tariff duties, imposts, embargoes and navigation acts, were adopted as national politico-economic policy primarily for the purpose of building strong nation-states. The body of positive doctrines and principles, which rationalized these trade barriers is known as "mercantilism." The principal objective of these doctrines was to enable statemakers to manipulate trade and resources so as to maintain a "favorable" balance of trade, in which commodity exports are in excess of imports, in order to acquire a net balance of precious metals. It was supposed that a large reserve of gold and silver is essential to the strength of a nation-state. It should be emphasized that tariff duties and embargoes fit into this scheme as a principal method of promoting "favorable" trade balances rather than for the protection of home industries, against the market competition of foreign producers. However, protection of special in-

\[1\] STALEY, WORLD ECONOMY IN TRANSITION. (1939) 3-35.
interest groups was not entirely absent from this legislation. A case in point is the protection of the agricultural producers of England by the "corn laws." Even in this instance the paramount purpose was not market protection before the Corn Law of 1663.²

Beginning in the 18th century a new stage of economic development began in England. This was the development now popularly known as the "industrial revolution." Gradually the economic order of Europe and many other parts of the world became dominated by "industrial capitalism," as an addition to, rather than a replacement of "commercial capitalism." Private fortunes as well as the chief production of manufactured economic goods were derived from the factory system, mechanical transport and mining, under the regime of "industrial capitalism."

In modern industrialism the political state took on a democratic form. A modicum of economic freedom came to prevail. However, trade barriers were not extinguished but were revamped to serve the needs of the newer economic groups. Thus, the principal purpose of trade barrier restrictions was changed from the promotion of strong states to that of protecting various domestic economic groups in the enjoyment of favorable market conditions in their home markets, freed to a considerable degree from the competition of foreign competitors. In some cases, the import duty for revenue purposes prevailed or was combined with the protective tariff, as exemplified in the tariff history of the United States. At times tariffs or other trade restrictions were used as weapons of retaliation by nations whose exporters are barred from another's markets.

More recently, particularly since 1930, trade barriers have been increased in variety and the purpose has changed once more. Many nation-states, and especially Germany and Italy, have made extensive use of many types of trade restrictions in co-ordination with their domestic policies, to gird themselves for aggressive war. This trend resembles in some respects the restrictions of the "mercantilist" states of Europe from the 15th to the 18th centuries. At least the purpose of the statemakers, in making the nation strong, coincides. However, although the methods are similar and the aims of strong states resemble one another, the modern

policy becomes that of the building of an economy of "autarchy" or self-sufficiency rather than the acquisition of a maximum store of "treasure" in the form of precious metals.

If we turn our attention from national trade barriers erected at the boundaries of nation-states to the internal trade barriers of the United States, we discover that the generalizations which apply to trade barriers in the stage of "industrial capitalism" likewise apply to the barriers erected by state and local governments. Like national tariffs, these state and local trade walls usually are intended to accomplish any of three ends: first, to provide a protected market for home producer and merchant groups by discouraging the consumption of "imported goods" from sister political jurisdictions; secondly, to retaliate against governments which have protected their own producers; and thirdly, to raise public revenues at the expense of those who produce, market or consume "imported" goods and services. Occasionally, state and local barriers arise unintentionally out of the fact of dual sovereignty. That is to say, that impediments to the free movement of economic values may exist because of the existence of a federal jurisdiction side by side with state jurisdictions, in the field of trade regulation. When the regulations of these dual sovereigns conflict, a trade barrier of considerable moment may exist through no premeditated fault of either government. Such obstructions as these which arise out of dual sovereignty, often occur from the fact that newer agencies of transportation or business must be regulated to protect the public interest before such agents become significant factors in interstate commerce. Local or state governments introduce such necessary regulation, because of their proximity to the problems, created by these changes. However, the local and state regulations, thus created, later become hindrances to interstate commerce, when in the course of time, these regulated agencies reach the stage when they become of considerable significance in interstate commerce. This is well illustrated in the history of the regulation of the steamboat, the railroad, and, today, the motor vehicle.²

Again, sometimes these barriers arise, not out of de-

liberate attempts of a state to harm the economic activities of outsiders doing business within its borders, but out of its failure to accommodate its legislation to social and economic changes in order to remove trade restrictions that grow out of the diversifications of a federal system composed of forty-eight semi-sovereign political states. For example when states maintain unique and non-uniform grading and container laws, long after common standards have been adopted generally throughout the country as a whole, such laws operate as serious hindrances to the movement of interstate commerce. Therefore if a state or local government, by intent or in fact, creates, maintains, or administers public measures so as to discriminate against outside competition, it is sponsoring trade barriers.

In some cases, no doubt, the internal barrier laws to which national business organizations object are essentially burdens which arise out of differences in conditions among various regions of the country, which necessarily require different state policies of regulation. Probably some groups use propaganda against state trade barriers as a neatly veiled method of attacking state regulation without desiring to accept the responsibility of federal regulation. They would like the barrier question to be expanded beyond its real significance.4

A more specific examination of some of the economic and social forces which have led to the creation of state and local discriminatory restrictions on outside products, services or businesses throws much light on the nature of these trade barriers. Three factors or forces have been influential recently, in producing the main forms of internal barriers in the United States. The first and perhaps most important of these is the world economic crisis and depression of the past decade. This has been felt by most businesses, in a reduced volume of business or a reduced income. It has also severely crippled many states and local governmental units by reducing their revenues and at the same time increasing their problems and functions.

A second force is represented by "scarcity conscious" established economic groups who fear the consequences of

4 See: Summary of testimony submitted to the Temporary National Economic Committee by Mr. Leon F. Banigan, Managing Director, National Council of Private Truck Owners, Inc., (March 20, 1940) 16, 17.
changes in the methods and channels of marketing and transportation. The groups thus threatened seek to protect their markets by measures which tend to restrict the new competitors. This behavior is exemplified by the reaction of local merchant groups to the growth of nation-wide distributors using mass distribution methods, changes which tend to short-cut older marketing channels, or streamline marketing services to reduce the costs of marketing. Special taxes or restrictions are devised to cut down the effectiveness of the new competitors by increasing their costs or raising their prices. Direct selling and chain store merchandising represent examples of such competitive threats. Discriminatory chain store taxes, and resale price maintenance laws, illustrate reactions of threatened groups to the new competition. The expansion of our national highway network and the improvement in motor carriers leading to increases in interregional highway transport are changes which fall in this category. Likewise, the older, well established operators of transport agencies fear a loss of market opportunities. Improvements in methods of handling commodities, such as mechanical refrigeration, glass lined tank cars for milk, and faster transport have extended the area of competition for various agricultural products, leading to consequent disorganization of local markets and efforts to protect and preserve these markets for nearby established farmer-producers. The reaction of these groups threatened by these new forms of competition is usually observed in attempts to obtain some form of protection from the economic intruders. This seems to apply alike to the creation of local as well as national trade barriers.⁵

A third force or factor which has stimulated trade exclusion legislation is the situation surrounding the return of legalized liquor in 1934. The Twenty-first Amendment raised the problem of local and state control, and in its wording admitted the possibility of legal discrimination between home and outside producers.⁶

Pushed by the combination of these several economic

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⁵ Melder, State and Local Barriers to Interstate Commerce in the United States, (1937) 168-171.
forces, and encouraged by such legal changes, it is not difficult to understand why state and local legislators have sometimes succumbed to the desire to promote the security of local enterprise or protect public revenues by restrictive legislation, which in its real nature tends to prevent full prosperity or to hamper recovery.

Because the Constitution gives to Congress the power "to regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes," and forbids any state without the consent of Congress, to "lay any imposts or Duties on Imports or Exports, except as may be necessary for executing its inspection laws," the states are nominally without tariff making powers, and the power to exclude or discriminate against each other's products. Exceptions occur when Congress grants to the states its authority over interstate commerce, as it has done for example, in the case of prison-made goods, or when a constitutional amendment grants such power to the states, as in the case of the Twenty-first Amendment.

The principal forms of state and local trade barriers which have received court sanction are classified as "indirect burdens" on interstate commerce. These laws are based on the states' rights or powers to tax and license those enjoying property and other privileges or rights in the state, the states' police and general regulatory powers, which include sanitary protection of the health and goods of persons resident in the state, the power to impose quarantines, and to provide for the safety of its citizens' property and to protect the morals of the population. Other types of laws which tend to clog the arteries of trade, and are sanctioned by the courts are based on the sovereign proprietary powers of states or, as already stated above, they rest on specific grants of authority to the states by Congress or Constitutional amendment. The proprietary or corporate powers relate to the conservation of natural resources and ownership of public works and property. A short resume of the leading types of these barriers with a description of the conditions or groups which assisted to create them is perhaps the best

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7 U.S. CONST., ART. I, §8(3).
8 U.S. CONST., ART. I, § 10(2),(3).
manner of familiarizing the reader with their economic significance.⁹

Several types of discriminations are based on the tax and license powers of the states. Many of these powers may be delegated to local governmental units. One type of such discrimination is represented by special taxes on certain commodities which are believed by resident economic groups to compete with products of the state. A good illustration of this type of barrier is that afforded by the rather widespread practice of restricting the sale of various types of oleomargarine, by special taxes and excessive regulation. On the one hand, many dairy states levy heavy excise and license taxes on the producers, sellers and consumers of margarine. On the other hand, states whose residents produce a considerable amount of food oils, such as cottonseed oil, soybean oil, and animal fats other than butter, commonly levy excessive excise taxes on the sale of margarine within their borders which contains imported oils such as cocoanut oil, palm oil and babassu oil. Thirty states levy one or more of these discriminatory measures on the sale of margarine.¹⁰

A second type of trade tax discrimination is represented by the singling out of certain forms of enterprise or trade channel, for example, chain stores, for higher taxation than for other competing forms. Following the lead of Indiana, whose graduated licence tax ¹¹ was the first of its type to be sustained,¹² twenty-one states by 1937 were enforcing graduated chain store tax laws.¹³

A third type of tax protection imposes discriminatory fees and licenses upon merchant-truckers and non-resident

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⁹ For a more complete discussion and classification consult other publications, as follows; Melder, op. cit. supra, note 5; Taylor, Burtis, Waugh, Barriers to Internal Trade in Farm Products (U.S. Dept. Agri., 1939); Comparative Charts of State Statutes illustrating Barriers to Trade Between States, Marketing Laws Survey (W.P.A. 1939); Melder and Green, Trade Barrier Research Bulletin Series (Council of State Governments, 1939).

¹⁰ Used car import tax laws, and carbonated beverage license laws, as well as certain other commodity taxes, at times appear to combine barrier features similar to the margarine tax and license laws.

¹¹ IND. STAT. ANN (Burns 1933) §§ 42-301—42-313.

¹² State Board of Tax Commissioners v. Jackson, 283 U.S. 527 (1931).

¹³ Through court action and expiration the number was reduced to 19 by the end of 1939.
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canvassers. Such discrimination, also, is practiced commonly by local and municipal authorities.\textsuperscript{14}

A fourth type of tax regulation which discriminates against the outsider and in favor of the domestic concern is represented by premium taxes on foreign insurance companies doing business within a state. Twenty-nine states impose such taxes. Ten states exempt the foreign corporation from the tax in whole or in part if the corporation maintains a certain minimum percentage of their reserves invested within the state.\textsuperscript{15}

A fifth type of tax discrimination is found in the alcoholic beverage and liquor laws which have been enacted since the adoption of the Twenty-first Amendment. In their operation these laws are used to restrict or destroy out-of-state competition with resident liquor producers or dealers, or to protect resident producers of raw materials usable in the manufacture of alcoholic beverages.\textsuperscript{16} Although many of these barriers are invoked under the state police power, probably the most effective discriminations are produced under the taxing power.

Three other types of tax measures appear to have trade barrier aspects as related to interstate commerce. Of chief importance are the use taxes, which when imposed without an "offset" or exemption for sales taxes paid in the state of sale imposes a double tax burden. This double tax, however, is not a serious impediment to interstate trade.\textsuperscript{17} Nevertheless, all general use taxes, whether or not they result in double taxation, may operate as trade barriers because of their "nuisance value."\textsuperscript{18} These taxes were originally levied to prevent loss of revenue caused by residents buying outside the state in order to evade the state's sales tax. General use taxes tend, however, to protect resident merchants from this loss of business, as well.

\textsuperscript{14} Taylor, Burtis, and Waugh, \textit{op. cit. supra} note 9 at 58-67.
\textsuperscript{15} Melder, \textit{op. cit. supra} note 5 at 44-54.
\textsuperscript{16} For a tabular presentation of these laws see: Comparative Charts of State Statutes Illustrating Barriers to Trade Between States. \textit{Marketing Laws Survey}, (W.P.A. 1939) 65-71.
\textsuperscript{17} Waters, \textit{USE TAXES AND THEIR LEGAL AND ECONOMIC BACKGROUND} (Studies in Business No. 19, University of Kansas, 1940) 86-88.
\textsuperscript{18} Melder, \textit{State Use Taxes as Trade Barriers} (Trade Barrier Research Bulletin Series, Council of State Governments, 1939) 2; \textit{Proceedings of the National Tax Association} (1939). \textit{Proceedings of the National Tax Association} (1940) 384, 393.
Another minor tax trade barrier arises when a state taxes non-resident motor vehicles so as to discriminate in favor of resident trucks and busses.\textsuperscript{19}

A final type of state tax discrimination is the levy of special taxes and license fees on “foreign” corporations in return for the privilege of doing business within a state’s borders.\textsuperscript{20} As a trade barrier it is probably of minor importance.

Police and regulatory powers are sometimes used in such a way as to become effective trade barriers. Under these powers, states exercise the functions of protecting the public health, safety and morals. While performing these functions it is often necessary to interfere with interstate and interregional commerce. When such occasions arise trade barriers exist if the measures taken go beyond the necessities of the situation and operate to the economic advantage of local residents and industries, at the cost of persons or products of sister states. Necessarily, the distinction between legitimate police measures and indefensible trade barriers on many occasions defies the best judgment of the experts.

Some of the more or less significant types of barriers based on police or regulatory powers of the states fall into five categories. The first category applies especially to dairy products. Milk market exclusion by limitation of the area or milk shed from which fluid milk may be supplied to city markets is accomplished by a refusal to inspect the premises of some dairymen who wish to supply the market, or by arbitrary and frequent changes in the sanitary requirements applicable to milk producers.\textsuperscript{21} In addition State Milk Control Boards have been created to regulate milk prices, not to hold prices down as was the case in most public utility regulation, but to hold them up, in order to protect dealers’ margins and prices paid farmers for fluid milk.\textsuperscript{22} All this is usually done in the name of public health, but the obvious objective is the protection of established production areas from competition induced by modern transportation facilities.

\textsuperscript{19} Melder, op. cit supra note 5 at 77; Taylor, Burtis, and Waugh, op. cit. supra note 9 at 38-42.

\textsuperscript{20} Melder, op. cit. supra note 5 at 41-44.

\textsuperscript{21} Spencer, Practice and Theory of Market Exclusion Within the U.S. (Journal of Farm Economics, Feb. 1933) 142.

\textsuperscript{22} Melder, op. cit. supra note 5 at 111-117.
A second category of police regulation used as a trade barrier permits exclusion of plant or animal products by means of quarantines based on economic rather than health considerations. Likewise, the regulation of the entry of nursery stock, at times, goes beyond the mere control of disease. Such requirements as the filing of large surety bonds, permit tags to accompany each interstate shipment, and the filing of special invoices with state officials prior to shipment of nursery stock tend to seriously discourage such imports.23

A third type of police measure consists of restrictions on the movement of laborers across political boundaries by requiring monetary proof of the migrants' ability to remain self-supporting.24 This category might also include the discriminatory treatment of non-residents in police measures, such as the ordinances enforced by municipalities prohibiting certain types of retailing in the guise of preventing "public nuisances." This is exemplified by the so-called "Green River Ordinance" (named for the town of Green River, Wyoming), which declares canvassing, soliciting, peddling, et cetera, from house to house, without an invitation, is a public nuisance, and therefore is forbidden. It is enforced in such a way as to discriminate economically in favor of local or established merchants. Such unequal economic consequences between resident and non-resident merchants as those which arise from the enforcement of these laws may not constitute legal discriminations in the eyes of the courts, because the municipalities in question make classifications to fit differences in conditions which the courts may regard as "reasonable." Although these ordinances supposedly prohibit door-to-door selling by resident and non-resident alike, the municipal officials are often inclined to wink at violations by the local resident. According to one report, "In practically every instance where passage of the ordinances was opposed, the sponsors as well

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23 Melder, *Agricultural Quarantines as Trade Barriers* (Trade Barrier Research Bulletin Series, Council of State Governments, 1939). Some quarantine measures are applied in such ways as to make it difficult if not impossible to justify them on biological grounds. For example, a few years ago, Texas barred out all Florida citrus fruit except during the season when Texas citrus orchards were not bearing. While Texas-grown citrus fruits were in the market, no competitive fruit was permitted to enter. Melder, *op. cit. supra* note 5 at 132.

24 Melder, *op. cit. supra* note 5 at 147-151.
as the members of the city council openly declared that it was not their intention to apply the ordinance to local salespeople. As a matter of fact the Police Officers Association of the State of South Dakota, came to the understanding, more or less definite, that only transients would be subject to enforcement.\(^{25}\) Over 400 cities and towns had adopted the Green River type of ordinance as of July, 1939.\(^{26}\)

Fourthly, regulations of dimensions, weights and equipment of interstate trucks and busses and the use of ports-of-entry on interstate highways so as to curb the use of the highways by the motor carriers of neighboring states, often adversely affect interstate highway transportation.\(^{27}\) Even though an interstate truck operator receives equal treatment with intrastate truckers, nevertheless, he must comply with such a variety of dimension, safety and liability requirements that at times he finds himself violating one state's laws in order to comply with the laws of an adjacent state. These conflicting rules were not originally the product of provincially minded legislators, but the very multiplicity of rules has become a real burden to interstate commerce. It is this multiplicity of rules that members of the trucking industry are complaining about. With the enactment of the Federal Motor Carrier Act of 1935 the first step toward the solution of this problem has been taken.

In addition to being restricted by a maze of non-uniform state requirements, the interstate trucker sometimes finds his operations hindered by "ports-of-entry." About eight western states operate these ports on highway entrances to the state, as a means of enforcing their motor vehicle laws, collecting ton-mile taxes and regulating the entry of nursery stock and other commodities. Although in theory the port officials do not discriminate against outside trucks, in practice shippers and truckers and even private pleasure car travellers lose time and suffer other annoyances to such a degree that complaints are constantly heard against these stoppages. Ports-of-entry are of such a spectacular nature that some ob-

\(^{25}\) Letter to author from Dr. C. T. Arlt, of Oberlin College, authority on local trade regulation, as of Feb. 8, 1940.

\(^{26}\) National Institute of Law Officers, Opinion Bulletin No. 46, (July 1939).

\(^{27}\) Taylor, Burtis, and Waugh, op. cit. supra note 9 at 42-49.
servers consider them the outstanding example of what they term the "Balkanizing of the United States."  

Still another form of discrimination is the establishment of state grades, standards and labels which do not conform to Federal or other state specifications with the result that the free movement of goods between states tends to be interrupted. Some of these laws go so far as to require out-of-state eggs to be branded as "shipped" while eggs from resident poultrymen are branded with the name of the home state, or as "fresh" eggs.

Another class of barriers is based on the corporate or proprietary powers of the state. As the sovereign, a state is proprietor of the public domain, public works and such natural resources as have not been reduced to its possession. Furthermore as a corporate entity a state possesses the power and duty of spending large amounts of public moneys in carrying out its proprietary, police, and other functions. Under their powers as proprietors in conserving natural resources and owning public property and in performing their spending functions the various states may exercise several types of preferences which favor residents or discriminations which penalize non-residents, with very little restraint from the courts. The leading forms are as follows:

First, as employers, states may refuse employment on public payrolls, to any but legal residents. By "legal residents" is meant those persons who have maintained their homes for a minimum period varying from six months to five years depending upon the state, and qualified in other possible ways, such as by the payment of a poll tax.

A second related policy which many states have followed consists of favoring residents in the expenditure of public moneys. One way in which this is carried out is to require that public printing contracts shall be awarded only to resident printing firms. Twenty-six states having such a policy create a local monopoly on public printing contracts.

This principle of protecting residents against non-resident competition by means of granting preferences in the expenditure of public moneys has been extended in recent years to other groups. Thus twenty-eight states exercise some degree of preference for state produced products when

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28 Id. at 49, 50; Melder op. cit. supra note 5 at 75-78.
29 For a discussion see: Melder, op. cit. supra note 5 at 12-36.
buying supplies for public institutions or building materials for public works. These laws demonstrate an interesting variety. For instance, six states purchase for public use only coal mined within the state. Seven states require building stone and other materials produced within the state to be used in the construction and repair of public buildings, whenever such are obtainable. One state even requires that textbooks for the public schools shall be printed within the state. In all, forty-seven states have adopted at least one type of citizen preference laws, intended to restrict the movement into the state of products or residents of other states, and to protect some residents or home groups from the competition of outsiders.

Municipal preference ordinances are even more common than state preference statutes. The city of Seattle recently voted to put a 5% preference for resident produced supplies into the city charter. Several California cities have similar charter provisions. Probably hundreds of municipalities informally practice such protection.30

In so far as higher prices are thus paid for home produced products, such practices tend to increase the cost of state government, at the expense of the taxpayers as a whole. Furthermore, such measures may at times injure the outside market for residents, because, as in international trade, in order to sell abroad a group must permit outsiders to sell their goods inside.

As conservator of public or even privately owned natural resources, a state may place limitations or absolute prohibitions on the export of products of natural resources, such as hydro-electricity, in order to force industry, which would obtain such products at advantageous prices, to locate within the state. A specific instance of such an export embargo is to be found in the State of Maine. Since 1909 Maine has

30 For instance, in February 1940, in Worcester, Massachusetts, one councilman filed an order to introduce an ordinance to make such public preference for resident business compulsory on city officials. Worcester Evening Gazette, Worcester Massachusetts, (Feb. 9, 1940). The reason he gave for wanting such an ordinance was that a floor contract for a public school almost went to an out-of-town bidder. The councilman complained that when bids were opened the outside concern was low bidder. To keep from giving the contract to that bidder, it was necessary to throw out all bids and call for new ones. On the second set of bids a local concern was low bidder. It is evident that in practice, preferences are customary although not formally expressed in ordinances.
permitted no hydro-electric power to be transmitted out of
the state. The law was enacted for the purpose of inducing
industrial plants to move into the state in order to take ad-
vantage of Maine's cheap hydro-electric power. It has been
in force for thirty-one years during which time numerous
attempts at repeal failed. Its constitutionality is unsettled.
Public opinion has been so strongly behind the law that the
electric utility companies of Maine evidently have preferred
not to test its constitutionality in the courts for fear of
antagonizing a more or less friendly public.

It would be a mistake to give the reader the impres-
sion that the recent growth of trade barriers between the
states has been the deliberate attempt of state legislators
to wall off their respective states from the rest of the union.
Many times lawmakers enact such laws in almost complete
innocence of their consequences. The trade barrier effects
of many motor truck specification laws and highway ports-
of-entry statutes are usually not foreseen. However, much
barrier legislation is probably motivated by the desire to
furnish protected markets to various resident special interest
groups.

Some trade barriers exist without benefit of legal en-
actment. These are invariably intended to give market pro-
tection to special groups. By their very nature, these trade
barriers between states, cities or other sections are secretive.
They exist extra-legally or illegally—which is sometimes the
best reason for their effectiveness. A barrier law may ulti-
mately be recognized as such by those adversely affected,
and if sufficient protest results it is sometimes repealed. A
trade barrier which operates without legal basis is seldom
recognized in its true colors, so surreptitious is its nature.
As a consequence it may exist successfully for years with
few consumers, taxpayers or other injured parties being the
wiser, and to the great benefit of the protected groups. In
fact so little is known of such interstate trade barriers that
they have almost entirely escaped the attention of barrier
law investigators.

A barrier of this general type is found in some cities,
in the building industry. Assistant Attorney General Thur-
man Arnold recently brought this to public attention as a
result of federal investigations preparatory to enforcing the

31 Laws of Maine (1909) ch. 244.
anti-trust laws. According to his statement whole building industries, including labor unions, are so organized in some cities as to virtually force home builders to pay exceedingly high building costs as compared with the costs of construction in neighboring areas, by the device of excluding outside competition through legal or extra-legal means.\(^3\)

Sometimes public construction contracts are awarded to local high bidders in lieu of the legally mandatory “lowest responsible bidder.” In such cases there may be collusion between the favored bidders and the awarding officials. Yet the fact remains that such discriminations are as effective as barriers to free market competition as any tariff law could be. They may operate for years, without discovery, simply because the victims cannot or dare not divulge the practice to the public. Probably no broad study of such state and local barriers will ever be made, because of the difficulty of gathering data on such practices.\(^3\)

Information is not available to permit a full discussion of all of the social and economic consequences of state and local trade barriers. Furthermore, it is impossible to measure by statistics their cost to business, labor and consumers in general. However, enough is known to be certain that many such restrictions have a tendency to hinder a maximum utilization of resources and to prevent goods and services from moving between producer and consumer with the least possible friction.\(^4\) In so far as the existing barrier laws tend to curb mass distribution and full regional specialization they are deterrents to national prosperity, and operate to check the rise of our American standard of living. They operate to prevent the full specialization, and interdependence which modern technology makes possible. Needless to say their economic effects have not been uniform. Doubtless favored groups have often benefited at the expense of consumers, outside competitors, taxpayers and others. On occasion barrier laws have been boomerangs to the very groups which sought their creation and benefits. For instance, in one state which attempted to protect its grape growers by

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\(^3\) See: Melder, op. cit. supra note 5 at 84.

\(^4\) Summary of testimony submitted to the Temporary National Economic Committee by Mr. A. H. Martin, Jr., executive director, Marketing Laws Survey, W.P.A. (March 18, 1940) 6-27.
a high tax on wines brought in from other states, the protective measure seems to have hurt the local wine industry in two ways; first, by encouraging a great increase in the grape acreage, as a consequence of which the home grape production was expanded to the point at which it often gluts the market so seriously as to force the price of grapes to ruinously low levels. It also causes beverage consumers to shift their consumption to other drinks than wine, because of the high price they must pay for wine as a result of the protective tax. In a majority of cases it is difficult, if not impossible, to measure the economic effects of these barriers satisfactorily. However, if they are viewed from their social and political consequences, their results seem certain and uniform. Invariably they have a harmful influence in interstate relations. Trade barriers, when discovered, produce controversies and increase tensions between the lawmakers and business groups of the various states involved. The principal proof of this statement lies in the fact that so many trade barrier laws and other practices have come into existence as reprisals for real or fancied injuries by other commonwealths. At least thirteen rather long drawn out interstate disputes over the use of highways occurred between 1931 and 1937, and involved the breakdown of reciprocity agreements between states, reprisals, stoppage of highway commerce, state expense, and serious loss to shippers.

Before 1939 when the Council of State Governments began a nationwide attempt to curb the growth of these laws and to repeal such measures already in existence, there had been a notable increase in disputes between the states over trade and commerce, which were reminiscent of the crisis period of state disputes during the years immediately preceding the adoption of our Constitution.

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32 For other examples see: Melder, State Trade Walls, (Public Affairs Committee, Incorporated, N.Y., 1939) 19-22.
33 Taylor, Burtis, and Waugh, op. cit supra note 9 at 42-43, Table 4.