Barriers to Internal Trade in Farm Products, by George R. Taylor, Edgar L. Burtis, and Frederick V. Waugh

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assumed that local pressure groups will join with out-of-state organizations in opposing any increased state regulation so that uniformity, if it is achieved, will be achieved on the level of the least regulation rather than on the level of the greatest.

It would be unfair both to this compilation and to the trade barrier movement generally if attention were not called to the fact that *some* state statutes and the *administration* of others is unquestionably directed toward the exclusion of 'foreign' competition. No defense of such statutes is here intended. Rather the emphasis is to insure that legitimate exercises of the state police power, often dictated by greatly varying local conditions, will not be thought lessly condemned.

The Compilation of the Marketing Laws Survey clearly avoided comment on the significance of the collections it presented. It was requested to present certain information and this it did. It is unfortunate that it did not indicate more specifically, even though this entailed the obvious danger of entering the argument, that statutes directly enacted as discriminatory "tariff walls" and statutory diversity resulting from our federal system do not present the same problem.

Whenever regulation increases the cost of distribution it is probable the cost will be paid by the consumer, thus, the test of the validity of such regulation might be posed in this fashion: if the regulation results from a community demand, expressed through the police or taxing power, for greater health, safety, or security it is reasonable that the consumer should pay the increased cost; if the regulation is the result of pressure group demand of a limited number of vendors or distributors then the increased cost of the product to the consumer is not justified by the demands of the particular community and may be considered an indefensible special group privilege—a barrier to free trade.

C.D.S.


This monograph, although admittedly not of a legal nature, and primarily concerned with the economic implications of laws which set up trade barriers in agricultural products, should be of immediate interest to those concerned with the legal aspects of the trade barrier problem. The report is a comprehensive analysis of barrier laws and serves to mark out their scope and effect. It suggests the results that may be expected in the future if no action is taken to check restrictions on commerce between the states, and urges the advantages to be gained from cooperative action. Without any attempt at a quantitative estimate, the authors express the belief that economic losses resulting from these laws are substantial.

It must be observed at the outset that the authors have not used "barrier" in the sense in which it has been usually defined but use it to refer to any kind of governmentally created obstacle to trade between the states. However, much of the material treated presents the usual trade barrier problem.
The contents consist of detailed discussions of eight specialized types of trade barrier laws affecting agricultural products, dairy products, margarine, alcoholic beverages, railroad and motor-vehicle regulation, merchant-truckers, grades, standards and labeling, and quarantines. Some use is made of statistics, with tables showing the effectiveness of taxes as barriers to trade in margarine, and charts portraying the range of differences in motor-truck regulations.

It is pointed out that the great mass of the legislation which creates trade barriers is enacted as police regulation in the interest of public health, as in the case of dairy products, or in the interest of public safety and general welfare, as in the case of regulations of motor-vehicles or merchant-truckers. The authors then raise the question whether police regulation, and the free movement of goods in interstate commerce are mutually exclusive. They take the position that they are not. As a solution, the authors suggest either federal regulation of products or instrumentalities moving in interstate commerce, in so far as that may be attained under the commerce power, or cooperative action between the states to secure uniformity. But optimism should not spring from these suggestions. It is open to serious doubt if sufficient federal regulation could be constitutionally imposed to better the situation. And there are a great many practical difficulties in the way of state cooperation as a solution.

The use of taxes as barriers is emphasized in the margarine tax laws by a comparison of state margarine taxes and the revenue obtained thereby. The extent to which the tax device may be extended to other fields is perhaps the major concern of those who seek the prevention of further barrier legislation.

The authors evince great anxiety over the cumulative effect of the many variations in state grading and labelling legislation and in motor vehicle regulation. That this lack of uniformity must have a retarding effect on commerce and that greater uniformity is desirable is admitted. But it seems hardly correct to classify indiscriminately the problem thus presented with the other forms of trade barriers. It is fairly obvious that these regulations were not generally enacted to favor interests within the state or to injure out-of-state competitors. Burdens but not discrimination usually result from the operation of such regulations.

The last section of the report relates to state-financed advertising of farm products. This topic should be considered somewhat aside from the trade barrier problem, for here there is no legally imposed restriction on commerce. However, this type of state action does merit serious consideration, for as brought out in this report, states have resorted to advertising tactics the legality of which might be questioned if they were used by private business. The inculcation of sectionalism through advertising does not seem to be a wise educational policy for any state to sponsor.

The monograph is an important contribution to the literature of trade barriers. Though, perhaps, not immediately apparent, its significance is great to the lawyer engaged in litigation in this field. With the increasing recognition of the necessity of a general factual background for the proper presentation of public law issues of this character the lawyer today must be at least an amateur economist.

C.D.S.