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Edward P. Costigan and the U.S. Tariff Commission

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EDWARD P. COSTIGAN AND THE U.S. TARIFF COMMISSION

by

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B.A., University of Colorado, 1961

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A thesis submitted to the Faculty of the Graduate School of the University of Colorado in partial fulfillment of the requirements for the degree of Doctor of Philosophy

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Edward P. Costigan and the U.S. Tariff Commission
Thesis directed by Associate Professor Howard L. Scamehorn

Based primarily on the Edward P. Costigan Papers in the University of Colorado's Norlin Library and on government documents, this study traces a Progressive's career on the United States Tariff Commission. Costigan's early political experience is briefly examined to reveal the forces which caused him to enter reform politics. A highly moralistic individual with a deep faith in the efficacy of government regulation in a growing, corporate economy, the Coloradan entered politics primarily because he was interested in eliminating corruption in municipal government and attaining a more predominant role in Denver's society.

The Tariff Commission was an idea which had been discussed in political circles in the late nineteenth century. Woodrow Wilson finally made it a permanent institution in 1916. Originally designed to gather data to help Congress in making scientific tariffs, the agency became, in 1922, a fact-finding body to aid the President in raising or lowering specific duties.

Edward Costigan served for five years on the
Commission without special distinction, probably because the other Commissioners shared his belief in a low tariff and because the agency was not involved in controversial tasks.

After 1922, he, David Lewis, and William S. Culbertson comprised a faction interested in a publicized, aggressive program for the agency. They wanted to force the President to lower tariffs on important consumer items. Furthermore, they were aware that the United States needed to open her markets to other nations so that foreign countries could acquire enough dollars to repay war-time debts and buy American goods.

Warren G. Harding and Calvin Coolidge both acted to change the Commission's composition so that it would reflect their own views. By the spring of 1925, Costigan was the only original member remaining on the agency.

In the next three years, he proved to be a constant source of irritation to the President. He also fought hard within the Commission to influence its policy and maintain its independence from Coolidge and special interest groups. When this tactic failed, the Coloradan publicized the agency's problems in the hope of arousing public and Congressional support. Although he succeeded in attracting
some backing, he ultimately failed to preserve the board's non-partisan status. Neither the people nor their political representatives really cared what happened to the board. Democrats and Progressives were both willing to embarrass Coolidge over selected issues, but they did not unite to defend the Commission.

Costigan finally resigned in 1928, when it became apparent that the Senate would not reorganize the agency's personnel. For three years he had made a nuisance of himself, opposing the President's clearly authorized control of the agency. Not until the following decade was the Colorado Progressive able to work with a government which supported policies he had advocated most of his political life.

This abstract is approved as to form and content. I recommend its publication.

Signed

Howard L. Alexander
Faculty member in charge of dissertation
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Like many reformers of his generation, Costigan was a product of an urban environment. Much of his childhood was spent in Denver, and after graduating from Harvard in 1899, he returned to the plains city to practice law. By that time he had already formed some basic attitudes toward society and government. In 1896 he had been completely captured by the excitement and adventure of the Spanish-American War. High strung, his frail body filled with strong ambitions and a sense of destiny, he associated his own future with that of his country. To Costigan, the conflict with Spain was but another step forward in the
CHAPTER I

THE MOVEMENT TO CREATE A TARIFF COMMISSION

On March 21, 1917, amidst a diplomatic crisis with Germany, President Woodrow Wilson took time to send a list of Tariff Commission appointments to the Senate. This new federal agency was designed to furnish Congress accurate data on the tariff. Most of its appointees were well known in political circles and had distinguished backgrounds in academic or public life. For one of them, Edward P. Costigan, the assignment climaxed a career as a leading western Progressive.

Like many reformers of his generation, Costigan was a product of an urban environment. Much of his childhood was spent in Denver, and after graduating from Harvard in 1899, he returned to the plains city to practice law.

By that time he had already formed some basic attitudes toward society and government. In 1896 he had been completely captured by the excitement and adventure of the Spanish-American War. High strung, his frail body filled with strong ambitions and a sense of destiny, he associated his own future with that of his country. To Costigan, the conflict with Spain was but another step forward in the
march of progress.\textsuperscript{1} He shared the enthusiasm of Theodore Roosevelt and other advocates of an expansionist policy. Acquisition of the Philippines did not darken this feeling, and Costigan supported McKinley in 1900 both for his foreign policy and his dedication to a growing industrial United States.

Even before finishing college, Costigan was aware of major developments here and abroad, and many of the attitudes and ambitions which he formed at Harvard marked the course of his life. While in Cambridge he had accepted the concept of Reform Darwinism which historian Eric F. Goldman has described as a vital tool to the early twentieth century reformer.\textsuperscript{2} Admitting the possibility, even the desirability of society's natural evolution, Costigan rejected the slow, inevitable growth which Herbert Spencer had made so popular.\textsuperscript{3}

Thus freed from prohibitions on social and economic

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\textsuperscript{3} DeLorme, "Costigan," 13, 14.
legislation, he turned to politics to test his ideas and to gain a public reputation. Young, wealthy, and ambitious, he had every reason to keep a close watch on the way the nation was heading.

Costigan entered politics well equipped with an ideology and an awareness of the vast changes industry was making upon traditional patterns of life. Carl Degler has stated that Progressivism was basically a response to the challenge of the city and factory, an attempt to tame the forces which had reduced much of the American dream to a mockery. Costigan, though raised in a growing metropolitan area, had seen the traditionally agrarian, small town elements of that vision diminished, but he was more affected by the distressing characteristics of urban growth. Political machines dominated government in the city and state, and they in turn were controlled by business interests and their representatives. In Denver, for example, William G. Evans and the Denver Tramway Company were a dominant force in every election between 1900 and 1906.

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5Benjamin Lindsey, "The Beast and the Jungle," Everybody's, XXII (January, 1910), 45, passim.
Anxious to make a name for himself, Costigan, in 1902, ran for a position in the state House of Representatives. It was a disillusioning experience. His election was subverted by complicated political dealings between the Republican and Democratic campaign managers. Unhappy that political machinations had thwarted the will of the people, and indignant over personal affronts from roughhouse pollwatchers, Costigan embarked upon a career of public reform. For the next decade and a half he was a reform leader in Colorado politics, helping to run the Honest Election League, supporting the Denver Civil Service Reform Association, and becoming one of the creators of the state's Progressive Party in 1910. He became an outspoken advocate of such measures as women suffrage, the initiative, referendum, and recall, and unlike many Progressives, he actively supported labor's right to organize. He envisioned, in those early years, a society in which government served as the guarantor of rights for both labor and capital, an advanced position for that day.

6 DeLorme, "Costigan," 102, 104.

leaders, he gave his support to Wilson.

It was not a difficult decision. Costigan had changed his early belief that government should treat capital and labor impartially, and Wilson had modified the scope of his reform legislation. The Coloradan had come to realize that only a positive program of corporate regulation, support for labor, and attention to the public needs could achieve the type of stability and material growth he felt the future should hold for his fellow man. He had not supported the concepts of the New Freedom because it apparently advocated a return to the small industrial unit which characterized the manufacturing economy of the nineteenth century. He accepted the material prosperity that the corporation brought into being, but he was deeply concerned with the indifference the new environment showed toward man. It was the human species whose progress was essential to the true growth of civilization, not business, and Costigan wanted to regulate the corporate society for man's benefit.

Wilson, concerned by pleas to protect business from the anticipated post-war scramble for markets, and seeking the statement that Wilson staffed the agency with men of an "independent tone of mind" is incorrect. All were moderate protectionists or theoretical free traders and had defined

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to take away from the Republicans as many campaign issues as possible, had widened his social and economic legislation and pushed through a bill creating a Tariff Commission in September, 1916. That the President had supported its establishment was interesting, since he had been hostile toward it earlier in his administration, but the political winds had shifted.

When Wilson moved toward Roosevelt's New Nationalism, Costigan became interested in his program. In early October, 1916, he publicly announced support for the President, labeling his accomplishments ones which the Progressives of 1912 could confidently promote. As an important Democratic supporter and a moderate protectionist, Costigan was a logical choice to represent the Rocky Mountain region on the new Tariff Commission.

The idea for such a body had a long historical lineage. Shortly after the Civil War, Congress created a

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13 Speech, October 1, 1916, MS in Costigan Papers.

14 Fred Greenbaum, "Edward P. Costigan: Study of a Progressive," (unpublished Ph.D. dissertation, Dept. of History, Columbia University, 1962), 263. Greenbaum's statement that Wilson staffed the agency with men of an "independent tone of mind" is incorrect. All were moderate protectionists or theoretical free traders and had definite ideas on how to interpret data. See pp. 263, 267.
three-man commission to examine the nation's financial structure; President Andrew Johnson named David A. Wells, Stephen Colwell and Samuel S. Hayes to serve on it. All three were protectionists, though Wells was later to become an outstanding spokesman for free trade.

The Revenue Commission reported to Congress in 1866 that the financial system was outdated and burdensome, primarily because the excise tax supplied too much government income. It recommended severe reductions in internal taxes and continuation of the existing tariff.

The Commission proved to be a useful source of information, and it was eventually imitated by other administrations, though for different reasons. A decade


19 Ibid., 17.

later, as business revived from the depression of 1873, the Treasury began to accrue an annual surplus. By 1881, despite a recession, this reached a yearly rate of $100,000,000, and it became clear that the tariff had to be re-examined, though it was not certain that rates had to be reduced. A high rate of duties could also lower income.

Drawing upon the example of the Revenue Commission, the suggestions of certain Republicans, and the various state experiments with independent regulatory agencies, President Arthur asked Congress to create a Tariff Commission. Republicans, fearing Democratic efforts to present the recession as an excuse to lower the tariff, wanted the issue indefinitely postponed. Arthur's proposals reflected these anxieties and the party used the agency to delay legislation designed to undermine protection. Congress responded to the President's suggestions


22 Ibid.

with an act providing for nine commissioners to "take into consideration and to thoroughly investigate all... questions relating to the agricultural, commercial, ... manufacturing, ... and industrial interests of the United States." 24

After some difficulty in getting the men he wanted, Arthur settled on a group led by John L. Hayes of Massachusetts, Secretary of the National Association of Wool Manufacturers. Other members included representatives of the iron and sugar industries, a statistician, an ex-officer of the New York Customs House, and public representatives from Georgia and Ohio. All were protectionists. Operating under instructions to revise, not destroy, the tariff, they investigated business conditions in twenty different locations throughout the eastern United States. 25

In its report to Congress, the Commission pointed out that the nation's industries did not share tariff benefits equally, and urged an expanded protective system.

24 U.S., Statutes at Large, XXII, Part 1, 64.

to equalize the conditions of competition between all domestic and foreign producers. If infant industries were being established, further protection was desirable, but they should demonstrate within twenty years an ability to compete without unusual tariff subsidies. The Commissioners glided easily over the implications of their suggestions. If equal conditions of competition was the standard, it logically meant that protection should allow reasonable profits to the domestic manufacturer. Thus the tariff could be raised to very high levels. Furthermore, if conditions of competition were truly equalized between foreign and domestic companies, foreign trade would cease. To its credit, the Commission recommended rate reductions designed to save the consumer hundreds of millions of dollars. It felt that its findings reflected "the best conservative opinion of the country," as well as "mere indiscriminate popular clamor." The report was a pleasant surprise to many who had been critical of independent agencies, for it was far more penetrating and disinterested than expected. Congress

26 Ibid.
27 Ibid., 56.
28 Ibid.
29 Tarbell, The Tariff In Our Times, 100.
did not accept all of the recommended rate reductions, but many of them did become law and the Commission's suggested administrative reforms were later enacted. Most observers, whatever their feelings on the protective tariff, believed that the board had helped Congress pass better legislation.

There was no serious inclination to have it recommend rates. However, as Robert P. Porter, the statistician, reported, "far from being a disadvantage to protection, a properly constituted Tariff Commission would enable Congress to reduce duties and retain or increase them where the rates are insufficient to protect industries." An advisory commission had clearly been used to maintain protection. The Republicans, faced with the loss of the House and a weak, three-seat margin in the Senate, used the report as a "reasonable" basis for revision and

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30 U.S., Congressional Record, 60th Cong., 1st Sess., 1908, XLII, Part 4, 3778.
31 Tarbell, The Tariff In Our Times, 100-101.
managed to maintain protection for most producers in the tariff act of 1883. As John L. Hayes put it, "reduction was not desirable to us, it was a concession to public sentiment."³³ The object was protection through reduction of some especially high rates. The agency was the non-partisan symbol through which the barriers were maintained.

Despite the lesson of this tactic, the tariff commission was not revived until after 1900. Although Grover Cleveland focused national attention on imports, he either overlooked what Arthur had done, or refused to imitate it. This could have been a contributing factor to his defeat in 1888, for an "impartial" agency might have swayed even more voters toward his position. Partially as a result of his agitation, Congress did direct the new Department of Labor to determine and compare costs of production for major goods produced in America and abroad. This reflected a growing suspicion that some nations could produce certain items more cheaply than others.³⁴ If accepted, this

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concept could have paved the way for lower tariffs, but little came of it. The Department made reports in 1891 on iron, steel, glass, textiles, coke, and coal; nothing else was done until 1912. 35

It was not until the end of the first decade of the new century that a tariff commission was recreated, and like many Progressive reforms, its initial impetus came from influential business groups. 36

Throughout the latter nineteenth century the Boston Home Market Club, the Manufacturer's Club of Philadelphia, the American Protective Tariff League and the American Iron and Steel Association had led the business community's quest for legislation. After the turn of the century, these groups were challenged by an increasing number of businessmen, many of whom had new thoughts on the meaning of the term "adequate protection." 37

35 Ibid.


The formation of trusts and the growing suspicion that key industries such as steel were getting special advantages from the tariff provoked a new look at the entire system. George E. Roberts, Republican banker and protectionist from Iowa, suggested lowering the tariff whenever it could be shown that it supported monopoly. This "Iowa Idea" was supported by many Republicans. Importers and exporters who would benefit greatly from lower rates were eager to see changes made, and New England industry, increasingly vocal in its demands for cheap raw materials, also favored reductions. Support in the Northwest and the Middle West for a reciprocal trade program was backed by railroads who were particularly interested in shipping Canadian wheat to American cities. In April, 1902, these groups gathered in Chicago to

38 Ibid., 56.

39 Ibid. Concern about monopoly was a vital force which provoked much of the public outcry for reform. Gabriel Kolko has shown that in major corporate sectors monopoly was nonexistent, and the growth of competition served to produce big business support for a host of regulatory acts passed during the Progressive Era. Since the public of that day was unaware of this, the fear of monopoly had a strong impact and aroused reformers. See Kolko, The Triumph of Conservatism, 11-56.
form the National Reciprocity League. Although it lasted barely a year, it was indicative of things to come. More and more, businessmen, politicians, and economic theorists were questioning tariff-making methods which had produced unevenly distributed and often unnecessary protection.

Among the reformers, none was more influential and outspoken than Herbert Edwin Miles. Educated at Lawrence College and Harvard, Miles built the Racine-Sattley Company of Racine, Wisconsin into one of the state's most important manufacturers of agricultural implements. A protectionist and a Republican, he believed that the tariff's benefits should be spread among all areas of industry and to all participants in production, labor as well as management.

As a manufacturer of agricultural tools he bought large amounts of steel, and in the course of business found that its domestic price exceeded the export level by about the amount of the duty. This turned his attention

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to the tariff, which, he soon concluded, was biased in favor of the trusts. His studies also convinced him that the object of import duties should be to equalize the difference in domestic and foreign costs of production.42

One of Miles' early supporters was Alvin H. Sanders, Chicago publisher of the Breeders Gazette, who was disturbed by McKinley's failure to get Senate approval for new commercial treaties. Committed to reciprocity, Sanders worked diligently in the early years of the century to force trade negotiations with Germany.43 He pointed out that in 1900 more than 65 per cent of all American exports were agricultural products. Germany was the world's second largest buyer of such farm produce and unless she extended concessions from her high tariff, passed in 1902, these sales had to be curtailed. Sanders wanted to be sure that every attempt was made to keep agricultural receipts as healthy as possible. Miles, on the other hand, wanted reduction of the tariff as an act of justice to the small manufacturer and to the consumer who suffered from the power of the trusts.44

42 Ibid. 43 Ibid., 7-9. 44 Ibid. Again, Miles' attitude reflects the general but erroneous popular conviction that monopolies
These two men expressed the uneasy feeling of many businessmen throughout the country, and it was this group which revived the idea of a tariff commission. They saw that Congress was so influenced by special interests that a fair, rational tariff could not be made.

The scientific approach to legislation was highly attractive to Progressives and the idea of establishing a non-partisan board to help Congress make a better tariff appealed to them. Conscious of this, Miles and Sanders agitated for a permanent commission of "impartial experts" to study costs of production in the United States and abroad. It was to report to Congress, making possible new rates equalizing domestic and foreign opportunities in the American market. They overlooked the fact that if this were accomplished, the incoming flow of items on the duty list would cease. Nevertheless, it was a popular principle, one which some Republicans had been discussing since 1881. Miles and Sanders also wanted to give to the President power to negotiate reciprocity agreements, within defined limits, without a two-thirds vote of controlled prices and tariff rates. See Kolko, The Triumph of Conservatism, 1-10.

45 Stone, One Man's Crusade for an Honest Tariff, 9.
approval in the Senate.

There was no mistaking the protectionist sentiment of these two men, yet their fervor for some kind of commission, "not unlike the present Interstate Commerce Commission," was clear and direct. As in the 1880's, protection was to be helped along by a government agency, but henceforth the tariff would be equitable.

Since Theodore Roosevelt and the Republican Party were in power, reformers worked to interest them in a tariff commission. With the President's support, Miles, Sanders, and organizations such as the National Association of Manufacturers could have obtained from Congress an agency to act for them in the best interests of the nation.

Unfortunately, Roosevelt wanted to avoid the issue. He had once endorsed the commission idea, and would do so again, but he showed no interest in it while he was in the White House. Agitation for tariff change, he said, reflected only a periodic popular belief that there ought

46 Ibid., 30.
47 Wiebe, Businessmen and Reform, 57.
48 Ibid., 61; Wills, Scientific Tariff Making, 18.
to be a change in rates. 49 So far as Roosevelt was concerned, "business would be better if we could have it understood definitely that for the next four or five years there would be . . . no revision." 50 Maintaining that the "question of what tariff is best for our people is primarily one of expediency," he found it expedient to leave it alone. 51

This opposition effectively prevented serious consideration of a new tariff and of the commission proposal. Nevertheless, some members of Congress, Senator Albert J. Beveridge of Indiana in particular, strongly supported a change. In 1907, he had urged Roosevelt to recommend in his annual message the creation of a tariff commission. 52 At this point the Indiana Senator envisioned an agency in the form of a bureau within one of the executive


51 Ibid., 932.

departments, its primary function being to collect data. Under Miles' influence he eventually introduced a bill to found a separate agency. When brought before the Senate, in January of 1908, it drew immediate criticism. On the surface it appeared that it might have found a more receptive audience. Beveridge was no renegade from protectionist thinking, and he had ready support from a small group of Republican insurgents, who, like himself, found tariff favoritism too strong for their liking. Most of them believed that import duties had helped create the United States' prosperity, but confronted with obvious excesses and realizing that, "with a Tariff bill it is just as it is with the River and Harbor bill. . . . You tickle me and I tickle you," they were hoping for changes which would create more equitable protection. The commission proposal drew their support, for they believed that it could create a tariff which denied to large

53 Ibid., 386.
54 U.S., Congressional Record, 60th Cong., 1st Sess., 1908, XLII, Part 1, 504.
56 Ibid., 1880.
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rates which taxed consumers additional millions of dollars
every year.

Unfortunately, the Panic of 1907 had generated
strong feelings in favor of higher protection, the tradi-
tional Republican remedy for economic crises. The few
insurgents in the Senate were not strong enough to fight
this sentiment without Roosevelt's support. Beveridge
finally had to abandon his bill. His efforts produced
only qualified support for tariff revision which the party
placed in its platform in 1908. 57

However, in 1909 the tariff became a prominent
issue for the first time in a decade. William Howard Taft
had promised tariff reform and his victory raised again
that issue in Congress. Also, the few Republican malcon-
tents in the Senate were bolstered by the successful races
of Joseph L. Bristow in Kansas and Albert Cummins in Iowa.
They, along with veterans such as Moses E. Clapp of
Minnesota, Robert La Follette of Wisconsin, Jonathan P.

57 It called for a tariff to equalize differences in
domestic and foreign costs of production, plus a reasonable
Dolliver of Iowa, and Beveridge of Indiana, were ready to force a downward revision of the Dingley Tariff.

Men outside Congress were also active. With the election over, Miles and James van Cleave, President of the National Association of Manufacturers, stepped up their efforts to get Congress to pass a bill creating a tariff commission before the Republicans began revising schedules. The Association called a "business meeting... of business men," in Indianapolis in mid-February. After some discussion, it resolved to support the drive for a tariff board as a fact-finding body to aid Congress and to promote the enlargement of foreign trade.

Beveridge's speech to the gathering eloquently summarized this program. He realized that the pending tariff would be built by old methods. However, he stated that a tariff agency was needed to formulate scientific, equitable bills in the future.

For a moment revisionists from the East and Middle West—importers, politicians, and businessmen—were united; but once the Payne-Aldrich bill was introduced

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58 Wills, Scientific Tariff Making, 47. Wills, Scientific Tariff Making, 19.
59 Ibid., 22.
into Congress the coalition fell apart. Low tariff principles broke under the impulse to seek special favors and businessmen found time to look out only for themselves.  

Beveridge revived his tariff commission measure, and in the House, Charles N. Fowler, Republican from New Jersey, introduced an even more drastic bill. He proposed giving the agency power to fix duties between certain maximum and minimum rates established by Congress. Both failed. Protectionists throughout the nation descended on Washington for their first battle in over a decade, and the commission proposals had trouble from the start.  

Herbert Miles quickly felt the pressure. Always sensitive to the charge that he was betraying the protectionist cause, he had taken great pains to make clear his position. He was "firmly opposed to . . . tariff revision . . . if the general interest is not at once safeguarded by sincere protectionists." While Miles

60 Wiebe, Businessmen and Reform, 93.
62 Wills, Scientific Tariff Making, 47.
wanted the repeal of special benefits for large corporations, he had no desire to do away with the general protective system.

Nevertheless, Republicans considered his attitude risky, and in 1909 he was removed from the National Association of Manufacturers' Committee on the Tariff. Furthermore, the Association ceased agitating for duty reductions and began to praise the Dingley Tariff as the quintessence of protectionist policies. Frightened by the prospect of rate changes which might threaten American prosperity, the Association reversed the attitude it had held in early 1909, and business settled back to await a more propitious time to do something about the distribution of import duties. 64

However, Congress still had to deal with the Middle Western insurgents. Dividing schedules among themselves, they became expert enough to subject Representative Serano E. Payne and Senator Nelson W. Aldrich to numerous embarrassments concerning the iniquities of the existing tariff. 65 But they could not preserve Beveridge's tariff

64 Wiebe, Businessmen and Reform, 94-95.

commission bill. Opponents pointed out that Congress, as the representative of the people, was the best available commission, and there were other fears that a tariff agency might recommend widespread reductions which would destroy the protective system. 66

When the Payne-Aldrich Act was completed the only indication in it of the tariff commission movement was a provision which allowed the President to employ a group of men to help him administer the maximum-minimum rates which the bill authorized. 67 Under the new tariff a set of minimum rates applied to all foreign producers. Nations who discriminated against the United States faced a 25 per cent increase. This was to become effective on March 31, 1910, unless the Executive certified that no undue discrimination existed. This he did.

Taft used this clause to create a Tariff Board. Believing that the recent hearings and discussions on protection had been hampered by a lack of good evidence for particular positions, he selected three Republicans to


examine all essential tariff facts "without reference to any party, any theory or any sectional interest." Henry C. Emory, former Professor of Economics at Yale, was named chairman of the group. Alvin Sanders' appointment pleased Middle Westerners, while James B. Reynold's selection brought to the Board a man with long experience as Assistant Secretary of the Treasury. Later, in response to criticism that this group was too biased, Taft added two Democrats to the agency, William M. Howard of Georgia, and Thomas Walker Page, Professor of Economics at the University of Virginia. Investigations into the cotton and wool schedules began immediately, and reports were scheduled for December, 1911.

The board, designed to insulate tariff making from partisan conflicts, soon found itself mired in politics. After winning the lower branch of Congress in 1910, the Democrats, together with Republican insurgents, forced

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through selected tariff reductions. These "pop-gun" bills were consistently vetoed by Taft who pleaded for a cessation of legislation until the Board had completed its studies. 70 Despite this firm stand, some businessmen became increasingly concerned that downward revision might become inevitable. Taking a cue from the President's request to await the agency's findings, they argued that a permanent, non-partisan commission could prevent extreme changes in the schedules. The National Tariff Commission Association took up the issue again, but now for the purpose of by-passing a "low-tariff" Congress in order to save protection. 71

Increasingly annoyed by Taft's vetoes, and his use of the Board to postpone action, the Democrats cut off its appropriation. 72 In 1912 they went to the people with a denunciation of the commission idea, a plea for tariff reform, and a call to elect as President a man who had no favors to bestow or promises to keep. Their success was overwhelming.

70 Wiebe, Businessmen and Reform, 96.
71 Ibid.
Woodrow Wilson's campaign presented the public with the kind of man not seen in national politics for many decades. An eloquent intellectual endowed with a fierce morality, Wilson had a penchant for viewing most issues as contests between good and evil. He characterized the tariff as part of an alliance between government and special interests, labeling the Payne-Aldrich Act "wrong in detail and radically wrong in principle." To him the tariff was a guarantor of profits and a shield against the rigors of competition, neither of which was necessary to domestic industry, particularly when protection placed such a burdensome tax on the consumer.

He intended to revise the tariff downward. Like Cleveland, he ignored the strategy of using a tariff commission to support his program. Where Cleveland probably did not see any great advantage to be gained from it, Wilson simply saw it as a Republican device under Taft, and a part of the Progressive Party's program. That was enough for him, and he refused to reverse his criticism of government "through a board of trustees," even though the


Ibid., 54-55.
group was supposed to be non-partisan. Instead, he took his own ideas and research to Congress, and with the able management of Senator Oscar Underwood, fashioned the lowest set of duties since the Tariff of 1857. The object was not free trade but rather destruction of the special privileges Republican policies had conferred on domestic producers. The Democratic goal was a competitive tariff under which the domestic producer had to compete with foreign companies for the American market. This, however, implied a fair profit and protection was still an economic fact of life. However, the Democrats wanted some imports; the Republicans allegedly tried to keep all of them out.

Although Wilson had worked closely with both houses of Congress, the tariff still contained poorly constructed schedules. There was clearly a need for a tariff commission to point out inadvertent errors, and to support

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78 Ibid., 417.
own party who had supported his basic initial program but who were now interested in additional social and economic legislation. Wilson, realizing their importance to his re-election in 1916, decided to do something about their demands and those of other organized reform groups.

In 1915, the Chamber of Commerce organized the National Tariff Commission League, whose goal was to establish a commission to recommend safeguards against foreign competition and to encourage world trade. James J. Hill, Cyrus E. McCormick, and George Perkins were among its board members. By the end of the year it claimed over 700 endorsements from business organizations.

This agitation heightened Wilson's fears. The Democratic Party had to offer convincing proof of its ability to cope with economic problems prior to the

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administration policies. Yet the President, busy with the rest of his program, had little time or inclination to consider backing such an agency. He apparently saw no need for it before the Great War changed the world's financial structure, and political pressures in the United States made it a desirable piece of legislation.

The winter of 1915 was an important one for those groups supporting a tariff commission. A recession forced Wilson to pause in his legislative program, to strengthen the business community's morale in order to hold its support. Furthermore, the war produced nationalistic sentiments in the United States which increased interest in high protection. While the fighting in Europe theoretically, and actually, reduced competition in American markets, it also produced an irrational fear of post-war competition. Wilson saw a political advantage in doing something to relieve these apprehensions.

He also faced a large group of reformers within his


81 Blum, Woodrow Wilson and the Politics of Morality, 80-81.
election of 1916. In early December, 1915, he at last yielded to Secretary of Agriculture David A. Houston's insistent appeals for consideration of the tariff commission proposal.

In January, Edward A. Filene, a Boston friend of the President's and Robert L. Owen of Oklahoma, chairman of the Senate Banking Committee, suggested to Wilson that a commission would conciliate some two to three million Progressives most of whom would otherwise be lost to the party. To them and to other economic nationalists whom Wilson wanted to attract, a scientific tariff was synonymous with a protective tariff, and this was what they wanted from the administration.

Wilson seemed to accede to their demands. He asked


87 Link, Wilson, Confusion and Crises, 342.

88 M.A. Matthews to Wilson, August 11, 1915; Wilson to James M. Cox, August 27, 1915; Ralph Blankenburg to Joseph Tumulty, September 19, 1916; Colonel George Pope to Wilson, February 28, 1916, Wilson Papers; Link, Wilson, Confusion and Crises, 342.
Claude Kitchin, Chairman of the Ways and Means Committee, to introduce and guide through the House a bill creating a fact-finding commission to help lawmakers obtain scientific information on tariffs, international trade conditions, and "dumping" in American markets. The President explained that he had changed his mind on the issue because "all the circumstances of the world have changed and . . . it is absolutely necessary that we should have a competent instrument of inquiry along the whole line of the many questions which affect our foreign commerce." When Kitchin decided he could not support the proposal, Henry T. Rainey of Illinois introduced it on February 1, 1916.

Arthur S. Link's suggestion that the bill's chief significance was as an indication of Wilson's shift from low-tariff Democrats like Underwood and Kitchin to the non-financial business community is not the whole explanation. Even if political pressure from Progressives and business elements did produce some impetus for Wilson's decision, the agency suited his general purpose of keeping

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90 Link, Wilson, Confusion and Crises, 343.
91 Ibid., 344.
tariff policy compatible with world economic developments. He understood, by 1916, that the war had radically altered trade relations. The United States was becoming a creditor nation, and this made it mandatory that a moderate tariff be maintained so that foreign countries could sell goods to get the dollars that they needed to buy American products.

Soon after Wilson acceded to Houston’s pleas, the Secretary asked Frank W. Taussig, Harvard Professor of Economics, for his thoughts on the matter. Houston, who wanted the agency to be part of the Federal Trade Commission, was clearly interested in the accumulation of information on foreign trade. Taussig, sharing this interest, submitted in early 1916 a plan for an agency.

He envisioned a four-man group, holding overlapping terms, to investigate the administrative and fiscal aspects of customs laws, different duty combinations, arrangement of schedules, and classification of articles.

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92 Wilson to Kitchin, January 24, 1916, quoted in Link, Wilson, Confusions and Crises, 343.
93 D.F. Houston to Frank W. Taussig, December 18, 1915, Costigan Papers.
94 Copy of Taussig’s draft in ibid.
It was also to report on tariff relations between the United States and other countries, and to advise Congress in making tariffs. Houston submitted the plan to Wilson. Thus as the President was being advised by Filene, Owen, and a host of other men who advocated a tariff commission, he was also getting a detailed plan for such an agency. Wilson was able to support a measure which ostensibly meant a move for greater protection, because it also meant that he could have a commission which would support his low-tariff policies. Since he appointed the agency, it would reflect his views. It could also accumulate much needed data on changes in world trade.

After the bill was introduced, Wilson continued to elaborate his plans for the agency. These comments clearly showed that he was preparing to develop the commission as a tool to help businessmen compete effectively in world markets. He stated to President Samuel M.

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95 Ibid.
96 Houston to Taussig, January 17, 1916, ibid.
98 Wilson to Edward N. Hurley, May 12, 1916, Ray Stannard Baker and William E. Dodd (eds.), Woodrow Wilson,
Hastings of the Illinois Manufacturing Association, "We have not been accustomed to the large world of international business, but we must get acquainted with it immediately." It was to be the "privilege and function of the tariff commission to obtain and collate in an even more systematic way than the Federal Trade Commission the information which is desired as a basis for our future action." Wilson also enunciated the need for a rational tariff policy. "The tariff has been revised," he stated, "not on the principle of repelling foreign trade, but upon the principle of encouraging it, upon something like a footing of equality with our own in respect of the terms of competition." The tariff commission was to open "legislative policy to the facts as they develop."


100 Ibid.


102 Ibid., 289.
Wilson wanted to make the tariff compatible with America's responsibilities and the realities of world trade, and the commission was to be an instrument to help him in these tasks. This was its main significance. He had no intention of repudiating the principles of the Underwood Tariff, for it had been predicated upon the idea of forcing business to face up to competition and to improve industry's producing and marketing capacities.

His appointments to the agency confirmed these motives and affirmed his desire to maintain a low tariff, for all the members sympathized with Wilson's views on protection. In selecting Edward P. Costigan to fill the final vacancy, the President confirmed his intentions of dealing with the tariff in the most rational, moderate manner possible. The Coloradan, anxious to serve in the federal government, quickly closed down his business in Denver and traveled to Washington. A new chapter in his life was about to begin.
CHAPTER II

WAR AND PEACE

The Revenue Act of 1916 did not take the tariff out of politics. Despite the desire of some Congressmen to have the Commission set rates, the legislature refused to relinquish its control over that controversial task. Progressive Senator George Norris of Nebraska claimed that the agency's only object was to gather data, a duty pleasing to Progressives who wanted a scientific tariff stripped of excesses. Other Senators were doubtful that it could achieve this goal. Boise Penrose of Pennsylvania, a conservative Republican, pointed out that the agency's information would undoubtedly reflect the views of the men doing the work; it was not possible to collect information which was immune to different interpretations.

Congress realized this and took special efforts to keep

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1 U.S., Congressional Record, 64th Cong., 1st Sess., 1916, LIII, Part 12, 12019.
2 Ibid., Part 13, 13850-13851.
3 Ibid., 13806-13808.
Still, the Commission’s supporters believed that legislators could derive much benefit from the agency. Sound commercial relationships were becoming increasingly important, especially to a nation whose trade was the greatest in the world. Businessmen who wanted the Underwood duties raised backed the board, for they viewed it as the first step toward increased duties, and Wilson’s congressional supporters were also willing to endorse a tariff protecting businesses proving a genuine need.  

George W. Perkins summed up feeling on the issue when he stated that the nation needed "neither a high tariff nor a low tariff but a scientific tariff; . . . a tariff made after exhaustive study and public hearings by men who gave . . . their entire time and earnest effort to this great subject."  

A Commission created for these purposes bothered conservative Republicans. Some were afraid that a

5 U.S., Congressional Record, 64th Cong., 1st Sess., 1916, LIII, Part 13, 13795.  
6 Ibid., Part 11, 10592.
scientific tariff might mean a reduced level of protection. Senator Warren G. Harding of Ohio stated that, "We do not oppose a tariff commission," but he feared that under the Democrats such a board would harm American industry. What he and many others overlooked was Wilson's concern for business. The Commission was designed to study all aspects of protection, particularly those arising from the war, in the hope of finding the best methods by which entrepreneurs could expand their foreign markets. Changes in the trading policies of the belligerent nations, as well as America's new creditor position in world finance, brought novel considerations into commercial dealings, and Wilson was determined to take them into account before planning any changes in the tariff. He was not fighting business; he simply had a greater understanding of financial realities than had many businessmen.

The agency's duties were hardly the sort to provoke

8L. Domeratzky, Chief, Division of Foreign Tariffs, Bureau of Foreign and Domestic Commerce, Department of Commerce, copy in ibid.
controversy, yet as Wilson said, "men without prepossessions are hard to find, and when you find them they are generally empty of anything else." For this reason, and because he realized that other nations could balance their trade deficits only through sales in the United States, Wilson appointed Commissioners who were moderate protectionists. Not one was an economic isolationist. All realized, as did the President, that American post-war prosperity depended, ultimately, on the economic health of other countries.

Wilson's selections for the Commission revealed his desire to preserve the tariff principles of 1913. Frank W. Taussig was named Chairman. Fifty-seven years old, he had been Henry Lee Professor of Economics at Harvard since 1901. There he had taught the classical economics of Adam Smith and Alfred Marshall, edited the *Quarterly Journal of Economics*, and written the *Tariff History of the United States*. His work with Wilson in formulating the new agency, along with his recognized leadership in the

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10 Biographical sketches of Tariff Commission appointees, Wilson Papers.
academic community, made him a good choice for the office. Cautiously optimistic of man's ability to control his environment, he subscribed to a moderate tariff. Certain that the Commission's fact-finding duties could be pursued away from the convolutions of politics, Taussig accepted the position on condition that he could return to Harvard once the agency was underway.

Daniel C. Roper was appointed Vice-Chairman. A South Carolina Democrat, he had served as First Assistant Postmaster-General, and clerk of the House Ways and Means Committee during the early years of Wilson's first administration. In that capacity he had compiled a tariff handbook which was published as an appendix to the Underwood-Simmons Tariff Report. He was well qualified for the position, and supported Wilson's tariff policy without

14 Biographical sketches of Tariff Commission appointees, Wilson Papers.
qualification. He left the agency after just a few months to become head of the Internal Revenue Service. The move probably reflected his desire for a more prestigious position from which to seek the job of Postmaster-General should William G. McAdoo become President in 1920.  

The third appointee, David J. Lewis, a Democrat, had represented Maryland in Congress from 1911 to 1917. An active supporter of the parcel post and a devotee of moderate protection, his defeat in 1916 by Joseph I. France in the Maryland senatorial contest left him without office.

William Kent, the fourth member, had experience in business, banking, and reform. Like Costigan, he had been active as a Progressive, working as a member of the Chicago City Council from 1895 to 1897, and as president of the Municipal Voters League and the Illinois Civil Service Association. His residence was Kentfield in Marin County, California, from which he had been elected United


16 Biographical sketches of Tariff Commission appointees, Wilson Papers.
States Representative from 1911 to 1917. Kent had supported Wilson's tariff revision and could be counted upon to argue for moderate protection.

The two remaining members represented the Great Plains and the Rocky Mountain regions. William S. Culbertson, sponsored by Kansas journalist William Allen White, Edward N. Hurley, Chairman of the Federal Trade Commission, and the entire Kansas Congressional delegation, had been a specialist for the Trade Commission and a consultant to Taft's Tariff Board. Egotistical, articulate, and extremely ambitious, Culbertson had sought appointment as chairman. He took a broad view of the tariff, feeling that rather than reflect specific interests in the business community, it should directly relate to the consumer's needs, revenue demands, and foreign affairs.

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17 Ibid.
19 Biographical sketches of Tariff Commission appointees, Wilson Papers.
20 Culbertson Diary, Fall, 1916, Culbertson Papers.
21 Culbertson Memorandum, December 31, 1916, Ibid.
The last appointee, Edward P. Costigan, was well known to Wilson as his major Colorado supporter during the 1916 campaign. A prominent lawyer, mine owner, and reformer, Costigan's long experience in politics, as well as his low tariff views, made him a good choice for the Commission.

When Daniel Roper resigned in 1917, Thomas Walker Page was named to replace him. Page had been a member of Taft's Tariff Board and held a position as Professor of Economics at the University of Virginia. Taussig, eager to have him, described him to Wilson as "eminently sane and sensible, obsessed by no prejudices or sweeping theories." He held moderate protectionist views and worked well with the original appointees.

The Tariff Commission was created to help promote the nation's commerce and business. It was asked to investigate the administrative, fiscal, and industrial effects of the customs laws, inquire into tariff relations between the United States and other countries, and examine

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22 Taussig to Wilson, December 20, 1917, Wilson Papers.
23 Wright, Tariff Making by Commission, 18.
competition from foreign industry. Along with these general duties, it was directed to examine the "dumping" practices and commercial treaties of other nations and to report its findings on all matters to Congress. To help it gather data, power was granted to summon and examine witnesses, take testimony, and subpoena information.

The agency was a permanent, fact-finding body having no administrative function. Thus its organization and operating methods were fairly simple. Economists, statisticians, and secretarial personnel were hired to supplement the main working force composed of the Cost of Production Division in the Bureau of Foreign and Domestic Commerce, which was transferred to the Board. William M. Steuart, former head of the Division of Manufacturers in the Bureau of the Census, was appointed Chief Statistician and Acting Secretary. Conferences were immediately held with other federal departments such as Treasury, Commerce,

24 U.S., Statutes at Large, XXXIX, Part 1, 795-796.

25 Ibid., 797.


and the Federal Trade Commission to draw on their data and coordinate the work the agency planned for itself. However, the war with Germany made it impossible to undertake many of its anticipated studies. Cost of production inquiries which had been planned for commodities originating in Europe were indefinitely postponed, and the Commission was forced to concentrate on programs which might stimulate Congressional interest when the war was over. Attention was drawn to the confused and archaic condition of the customs laws, and a complete program for revising them was submitted to the House Ways and Means Committee. It was a job long overdue, for no thorough study had been made since 1789.

In April, 1917, the Commission submitted a report on "interim" legislation. Preceding every tariff revision, during the period from the introduction to the eventual passage of an act, importers had bought huge quantities of goods under old rates and stored them for sale after new duties went into effect. As a result the

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28 Ibid.
government lost large revenues and the consumer was forced to pay an additional amount for goods which were raised in price to the new level of the duties. Congress was asked to make tariff legislation retroactive to the time a bill was introduced.  

The agency also suggested the possibility of establishing free ports. These cities were to be designated for free deposit of imported merchandise scheduled for reshipment out of the country, thereby greatly benefitting the commercial community. However, after a year the Commission had not obtained the support of Claude Kitchin, Chairman of the House Ways and Means Committee; even Wilson's urgings could not move a bill out of the committee.  

Since it was a fact-finding agency, designed to help Congress legislate sound tariffs, one important aspect of the Commission's work was the Tariff Information Catalogue, a series of publications inaugurated in 1917,  

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32 Wilson to Kitchin, July 12, 1918, Wilson Papers.
giving descriptions of every dutied item, listing its main foreign producer, stating its volume of sales in the United States and the existing duty. Surveys of the chemical and sugar industries in order to determine the amount and cost of domestic production were also completed.

The Commission devoted much attention to trade relations. War in Europe, by forcing the Allies to turn to the United States for financial aid and by destroying their foreign markets, indicated that commercial treaties and tariff arrangements between America and other nations could be drastically revised.

The United States emerged during the war as the creditor nation of the world, a position which demanded great financial and commercial responsibility. Though some experiments had been made with reciprocity and other forms of trade agreements, America had never established a permanent commercial policy. Further, it had interpreted the most-favored-nation clause differently than did European nations, extending that principle only if the

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recipient bestowed equal concessions in return. In Europe these benefits were issued without conditions. Clearly, with the United States' new financial and trading superiority, a firm, consistent trade policy seemed more than ever necessary.

The Commission was asked in early 1917 to study various forms and instruments of commercial policy and to suggest means of improving the nation's bargaining and trading positions. The following year the agency issued a report urging establishment of the principle of equality as the basis for America's trade relations. Foreign countries were to extend to the United States' goods the same rates and regulations they accorded to products of other nations. In return, America was not to discriminate against foreign commodities. Such a policy could free world trade from the complications and impediments of national barriers. It was also advantageous to the United

36 Ibid., 18.


States, for her manufacturing system and competitive position in the world markets were superior to most other nations.

To implement this policy, Congress was asked to provide a set of special duties applicable to the products of nations discriminating against American trade. The Commission made no recommendations on the use of the unconditional form of the most-favored-nation clause, but its adoption would have been compatible with a commercial policy of non-discrimination.

These were not the agency's only war-time activities. Much of its staff assumed duties directly related to the conflict. Frank Taussig served on the price-fixing committee of the War Industries Board and also worked with the Food Administration. Thomas Walker Page was an advisor on national meat policy, while Daniel Lewis was designated by Wilson to aid the Post Office Department's administration of the telephone and telegraph systems. Culbertson and Costigan made trips to Europe to gather what information they could on possible economic changes.

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39 Ibid., 14.

40 Jones, Tariff Retaliation, 3.
there. The Commission's most important war effort was a compilation of the commercial and tariff policies of other nations for use at the peace conference. Culbertson had sought such an assignment at the time the United States entered the war. He wrote Costigan on April 4, 1917, that "The services of this Commission will not be greatly in demand for some months, . . . we have an opportunity to prepare for the demand which will be made upon our services when peace comes under consideration." The two men shared the view that the post-war world needed to cooperate in its commercial dealings if all nations were to benefit from trade, and Culbertson was especially anxious to see the agency play a role in formulating these policies. He even envisioned it as a permanent Presidential tool, helping to negotiate commercial treaties.

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42 Culbertson Diary, Culbertson Papers.
43 Culbertson to Costigan, August 15, 1917, ibid.
44 Culbertson Diary, December 18, 1917, ibid.
Culbertson had far more ambition for the Commission than did the other members, including Costigan. The Kansan disliked its insignificance in prestige-conscious Washington and often spoke of how the agency could "spring into prominence" if programs were established to bring it "honor and fame." Taussig, more reluctant to push the board into areas before it was invited, waited until October, 1917, before volunteering the agency's services to help with peace plans. The offer accepted, the Commission was soon busy formulating data for the Inquiry, a program designed to prepare American diplomats for peace talks in Versailles.

Taussig was keenly interested in the problems of post-war trade. Fearful that commercial by-products of the conflict would make it difficult for nations to purchase raw materials, he had sent Wilson a plan, in the fall of 1918, to regulate the distribution of key

45Culbertson Diary, April 4, 1917; Culbertson to Costigan, August 15, 1917, ibid.

46Taussig to Colonel E.M. House, October 2, 1917, ibid.


commodities such as cotton, wool, rubber, sugar, coffee, copper, and tin. Taussig hoped the President, if interested, could gather support for it at Versailles. Concerned that the United States might be excluded from the new markets it had claimed during the war, the Chairman hoped that a proposal for international distribution of vital materials might protect America as well as other nations.

Wilson was apparently impressed with Taussig's thoughts and asked him to attend the peace conference. There the Chairman assumed charge of an international subcommittee responsible for drafting clauses on customs legislation. He clearly presented the American view on reciprocity, tariff discrimination, and the post-war commercial treatment of Germany, but his appeal for sympathetic treatment for the Weimar government failed to win acceptance.

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50 Taussig draft of suggestions on post-war policy, October 27, 1917, Costigan Papers.

51 Taussig to Costigan, March 31, 1919, ibid.
There was little chance that Germany would be treated with moderation. Even before the Armistice, at the Paris Economic Conference in June, 1916, the Allies had devised a program to subject the Central Powers to commercial discrimination after the war. It was partly in response to this proposal that Wilson had suggested in his Fourteen Points that economic barriers to trade be removed, so far as possible. But the Allies failed to realize that the defeated nations would have to achieve economic recovery before they could pay their reparations and support world trade. Germany, if she was willing, had the capacity to pay her debts, and the peace provisions should have been designed to prevent her alienation. But neither Britain, France, nor Italy

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realized this.\footnote{56} Etienne Mantoux's subsequent argument that the three powers justifiably imposed inequalities upon Germany ignored the Allies' need to provide for their own prosperity by supporting the Weimar Republic's economic revival.\footnote{57} Nor could extraction of most-favored-nation privileges from Germany, along with the provisions for duty-free exports from Poland, Luxembourg, and Alsace-Lorraine into that defeated nation, be held insignificant.\footnote{58} These were important, symbolic restrictions, particularly when Europe was turning to a highly nationalistic policy of protection. The economic health of the Allied states became visibly weaker soon after the peace conference, but they ignored the problems created by high tariff barriers and tried to stabilize the continent's monetary system.\footnote{59} The Brussels Conference in 1920 and the Genoa Conference in

\footnote{56} Moulton and Pasvolsky, War Debts and World Prosperity, 376; John M. Keynes, The Economic Consequences of the Peace (New York: Harcourt, Brace, and Howe, 1920), 226.

\footnote{57} Mantoux, The Carthaginian Peace, 90.

\footnote{58} Ibid.

1922 dealt more with this problem than with the growth of tariffs and other handicaps to trade.\textsuperscript{60} It was not until Austria, Hungary, and Germany collapsed in 1922–23 that it was finally recognized that there could be no recovery from the war until the defeated nations were economically sound.\textsuperscript{61} The Dawes Plan, drawn up in 1924, confirmed this.\textsuperscript{62}

By this time, however, many European countries had modified their commercial framework, a development which made it difficult to remove trade barriers. Great Britain had been one of the first to act. In 1916, the Balfour Commission had considered the United Kingdom's future commercial policies, reporting that the government should encourage manufactures vital to the nation's industrial position. While opposing a comprehensive tariff scheme, the Committee was willing to support minor efforts to meet the demands of the dominions and colonies for special economic privileges.\textsuperscript{63}

\textsuperscript{60}\textit{Ibid.}

\textsuperscript{61}\textit{Moulton and Pasvolsky, War Debts and World Prosperity}, 378–379.

\textsuperscript{62}\textit{Ibid.}, 379.

\textsuperscript{63}\textit{Commerce Reports}, No. 131, June 5, 1918, Costigan Papers.
Britain, along with this effort to increase her competitive position in domestic and world markets, applied wartime duties to some luxuries: motor cars, clocks, and musical instruments. Originally designed to expire in a decade, they were renewed in 1925. In 1920, the Dyestuffs Duty marked the United Kingdom's decision to take the first step toward national protection, and the Safeguarding Duties in the following year, reinforced this move. In a world fraught with nationalism no single debtor nation could refuse to protect itself and Britain extended preferences to parts of the Empire. Her era of general free trade had clearly come to a close, even though protection affected but one half of one per cent of her total imports.

France was much more aggressive. On April 23, 1918, she announced that unilateral bargaining served her interests best, and scrapped all of her most favored-

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nation treaties. Henceforth, her domestic market was protected by maximum and minimum rates. Concessions were made on the higher duties. In April, 1922, Spain adopted a similar policy. Canada, Belgium, Australia, India, Japan, and Italy soon followed this trend to establish higher trade barriers.

Europe's refusal to seek freer exchange damaged the stability of international trade. The United States, faced with new financial responsibilities, was no more rational than her Atlantic neighbors, although Woodrow Wilson tried to keep the Underwood Tariff intact.

The President was convinced that America needed expanded foreign markets for her surpluses, and he hoped that maintaining the Tariff of 1913 would encourage other nations to keep their low trade barriers. If this were accomplished, it would establish a new era of international trade. In any case, Wilson was determined that

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66 Jones, Tariff Retaliation, 156.
69 Diamond, The Economic Thought of Woodrow Wilson, 132-134.
70 Ibid., 162.
the United States repulse discrimination against her commerce.\textsuperscript{71}

To further the expansion of American exports, in 1918, he signed the Webb-Pomerene Act, a measure suspending the Sherman Anti-Trust Act for enterprises engaged primarily in foreign trade. The President believed that the consolidation of exporting firms was the only way that United States' goods could compete against foreign producers in the world's markets. The act never fulfilled its purpose. Up to 1929 the highest volume of trade exported by corporations covered by the statute did not exceed 13 per cent of the total shipments abroad in any one year, and those businesses secured unnecessary advantages in the home market since they also sold their products there.\textsuperscript{72}

Wilson tried to convince the people in the United States that there was no need to seek more protection.\textsuperscript{73}

He pointed out that "No serious danger" threatened

\begin{thebibliography}{99}
\bibitem{71} January 8, 1918, Baker and Dodd, \textit{Woodrow Wilson, Public Papers}, V, 289.
\bibitem{73} May 20, 1919, Baker and Dodd, \textit{Woodrow Wilson, Public Papers}, V, 492.
\end{thebibliography}
American industries, and that the country had emerged from the war in a far better condition than any of the European countries with which it had to compete. He looked forward to increased successes in world markets, and while prepared to protect dye-goods and chemicals, products instrumental to the national defense, he had no plans to increase the general rates of the existing tariff.

However, the President knew that so long as Europe remained economically unstable disturbances could cross the Atlantic. In America's own interest, she must help Europe revive herself, and he tried to impress this upon the country. Wilson drew attention to the fact that the United States had become a creditor nation, and that if Europe wanted to repay her debts, she would have to accumulate dollars. There were only three ways she could do this. She could sell Americans her goods, she could ship them her gold, or she could establish credit with New York financiers.

Europe was in no position to send gold, for the war

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74 Ibid.
75 Ibid., 493.
76 August 8, 1919, Ibid., 568-569.
77 Ibid., VI, 430.
had drained much of her reserves. Furthermore, the United States did not want it. Thus foreign countries had to sell goods, for credits were no long-term solution to a trade deficit. Anything which tended to prevent France, Germany, and England from doing this was an obstacle to world recovery and to the economic health of the United States.

As Wilson cautioned Congress, "If we want to sell, we must be prepared to buy." When the legislature passed the Emergency Agricultural Tariff in early 1921, Wilson vetoed it, asserting that, "If there ever was a time when America had anything to fear from foreign competition, that time has passed." Clearly this was not the time to raise trade barriers. The nation must discharge its duty to itself and to the world by widening, not contracting, its domestic market.

Wilson was not trying to revive Europe's economy at the expense of American trade. What he wanted was a widened sphere of freer economic exchange in which his country's superiority in manufacturing and agricultural

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78 Ibid.
79 Ibid., 431.
80 Ibid., 533.
81 Ibid., 534.
production could produce profits. In turn domestic markets had to be opened to the products of nations who needed and wanted to buy from the United States. It was not a plan to destroy business under the mosaic flag of internationalism. It was an effort to reconstruct the world to its own best advantage and in the best interests of the United States.

Republican critics who had defeated Wilson on the Versailles issue were anxious to re-institute their traditional policy of protection, a program which asserted that the nation could achieve a satisfactory degree of self-sufficiency no matter how other countries fared economically. As a spokesman for the American Worsted Yarn Spinners Association stated, "I am not sitting up nights worrying about Europe's problems . . . they are her own . . . babies; but I am very much interested in the troubles we have got here."

Many businessmen agreed. They feared Europe's

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82 Jones, Tariff Retaliation, 300.
efforts to reclaim pre-war markets, and they pointed with alarm to statistics issued by the National City Bank of New York which stated that in the fiscal year 1920, the nation's favorable balance of trade was the smallest since 1915. Although fearful of the threat of foreign competition, these same businessmen soon dominated the world's markets for manufactured goods. This hurt Europe's trade opportunities. The Republican tariff of 1922 further hampered European efforts to make profits which could be converted into dollars. Through the decade of the twenties, many continental nations depended upon the United States for loans to finance purchases. American tariff policy, along with an insistence on repayment of war debts, were two measures which tended to weaken those countries financial stability.


Wilson failed to convince the country or the Senate of the need to ratify the Versailles Treaty, and the period of nationalism which followed guaranteed that no new era of freer trade was at hand. In 1920, the United States repudiated the President's policy and tried to return to the more familiar "isolationist" pattern of the past.

The Republicans had regained their political strength in 1918 when they won control of Congress. They expected to win in 1920 as well. This possibility instilled fears in Edward Costigan, for he believed the Grand Old Party might destroy the Tariff Commission's "non-partisan" status.

This danger provided Costigan with his first opportunity to compose his ideas on the agency's proper functions. There was no doubt in his mind that Wilson's ideas on commercial policy were correct, and the Coloradan believed that his colleagues on the Commission shared these concepts. Any politically inspired effort to change the board's composition constituted a threat to its "unbiased" fact-finding capacity, and was certain to

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87 Costigan to Thomas Walker Page, February 28, 1920, Costigan Papers.
arouse Costigan's opposition. After Taussig and William Kent resigned in the summer of 1920, the Coloradan successfully pleaded with Thomas Walker Page to remain with the agency. The fewer vacancies there were on the Commission, the less opportunity the Republicans would have to change its composition.

Costigan had not lost the strong ties to Progressivism he had developed in Colorado during the century's first two decades. Wilsonian in his tariff thinking, a dedicated public servant, and a talented reformer, he wanted the Tariff Commission to support the program sketched by the President from 1918 to 1921. When the Republican party created a new function for the agency, administering the flexible tariff, Costigan found the tool he needed to try and implement a Progressive program for the Commission.

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88 Copy of speech in ibid.
CHAPTER III

A NEW TARIFF POLICY

Peace in Europe freed the Commissioners from their war-time duties and allowed them to turn full attention to tariff and commercial problems. From 1919 to 1921 they worked hard to interest Congress in needed legislation. Although most of their suggestions were the same ones put forward during the war, they did demonstrate that the agency could be constructive.

The board's Fifth Annual Report directed attention to the Tariff Information Surveys, inaugurated in 1917, and pointed out their usefulness to Congress if it decided to revise the tariff. A report on "dumping" and other forms of unfair foreign competition was sent to the House Ways and Means Committee in 1919. "Dumping" was the practice of selling foreign goods in America at a lower price than that charged in the country of origin. The intent was to drive out all competition, allowing a foreign corporation to dominate the United States' market for a particular product. The Commission recommended that an important federal officer head a single agency which could impose penalty duties on dumping in America.2

The board also called the proposed codification of the Customs Administration Law to Representative Joseph W. Forney's attention, and though he was uninterested in it, legislators later considered it more seriously.

Suggestions for interim legislation and free trade among the states still did not interest Congress, though the Commission stressed both, along with a report on the wool growing industry, suggesting that fleece be assessed according to its scoured content. Ordinarily, imported wool was unwashed and greasy, weighing more than the scoured product. Since varying amounts of oil were in a given quantity of wool, tariff revenue was uncertain, and the Commission's report reflected its interest in a more precise way of assessing wool.2

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\textsuperscript{3}Costigan Memorandum, July 11, 1919, Costigan Papers.

method of assessing duties. Since this device also offered a more certain level of protection, wool growers were interested, and it was eventually incorporated in the Fordney Tariff.

The Commission also published in 1919 a study of American commercial policies. It urged that the United States demand equal treatment for its commerce in the world's markets and extend similar privileges to nations trading in America. Congress adopted this policy, though not until 1922, and it also insisted that the rights of most-favored-nation be granted unconditionally, a position informally favored by the agency.

The Commission's most difficult post-war issue was the proposed assessment of imports on the basis of American selling prices rather than foreign costs of production. Depreciation in foreign exchange rates from 1919 to 1925 reduced gold prices precipitously, making it profitable to send greater amounts of goods to the United States. Protectionists suggested the American valuation as a device to raise duties and to appease distressed domestic producers. Sentiment for the plan was especially strong in

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5 U.S., Tariff Commission, Reciprocity and Commercial Treaties, 9, 19, 11.
the House of Representatives.

When Congress asked the Tariff Commission for an opinion, the agency, refusing to judge the plan, responded with an enumeration of the administrative changes which such a program required. Costigan, Page, Culbertson, and Lewis were moderate protectionists. The American valuation scheme did not appeal to them, but for political reasons they were careful to make their views as inoffensive as possible.

The agency carefully evaded all issues which had partisan overtones. For example, it turned down requests for opinions on the amount of protection needed to equalize the costs of producing goods in the United States and abroad, partly because there was no information on which to base a judgment, but also because such advice was politically dangerous.

The agency's recommendations, although timely and valid, could not conceal its declining contribution to

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7 Joseph Fordney to Thomas Walker Page, January 14, 1921; Page to Fordney, January 15, 1921; Page to Fordney, January 19, 1921; Page to John A. Garner, January 13, 1921, Costigan Papers.
good, scientific government. Taussig's growing disinterest and resignation in 1920 lessened its activity and weakened its image as a useful collector of tariff data. Beginning in January, 1919, and continuing into 1921, most of its meetings were adjourned without consideration of any business. Hostile Republicans noticed this listlessness and refused the Commission's request for a deficiency appropriation in early 1919. The following summer they made a minor effort to cut off all the agency's funds, much as the Democrats had done to the Tariff Board in 1911. Inadequately financed, the Commission transferred several staff members to other government bureaus.

There was some danger that the agency might wither under Republican attacks and from its own inactivity. The Commission was saved from possible extinction by Senator Warren G. Harding's successful campaign in 1920 and the Republican party's decision to revise the Underwood Act. Harding had always favored a tariff board if it

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was controlled by Republicans and new protective legislation placed demands upon the agency for advice and information. Warren Harding sold "normalcy" as well as himself, and it was to this man and his program that the electorate responded. Based upon the beliefs of a rural, isolationist society, his creed, which should have perished with the war, was undeniably attractive to the voters. When he pleaded that it was well enough to preach Americanism, but "more important to practice it," he only told the populace what it wanted hear. Most people felt that what the United States needed was "practical Americanism in business as well as . . . politics." Harding did not seek to restore the old order, but he called for a "sane normalcy," preserving those "fundamentals" which were "unchangeable and everlasting." Nationalism was clearly an enduring principle; it was in fact, "the very soul of highest Americanism." Yet he

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12 Ibid. 13 Ibid. 14 Ibid.
defined it narrowly. The United States needed no advice from other countries in formulating its policies. It was fine to idealize, he stated, but it was "very practical to make sure our own house is in perfect order, before we attempt the miracle of old-world stabilization." 

Harding enunciated these ideas after he had acknowledged his interest in the Presidential nomination. He had learned, as do all political hopefuls, that the only way to achieve high office was to work actively for it. When neither General Leonard Wood nor Governor Frank O. Lowden of Illinois received a majority, the Republican National Convention turned to the Ohio Senator. He was available, he was sound, and he looked like a President. Contrary to popular myth, he was not the hand-picked product of the Senate's old guard. Henry Cabot Lodge and Boise Penrose were no longer the powers they had once been. Although they supported Harding, his strength in Ohio, along with other assets, lured the convention to Harding to John L. Von Blon, December 22, 1919, ibid; Harding had announced his candidacy for the nomination, as a favorite-son of Ohio, on December 17, 1919.
his candidacy.  

The Republican landslide in 1920 obliterated any hope Wilson might have had for his tariff policy. It was certain that Congress would pass a new, higher tariff. Harding, although aware of the nation's changed financial relationship with the world, still wanted to pursue his party's traditional policy of protection. It was a position held by many responsible men besides the President.

Harding's public statements were unclear. He had been quoted as saying that "The United States should adopt a protective tariff of such a character as will help the struggling industries of Europe to get on their feet."  

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This seemed to indicate that he realized that Europe had to sell in American markets in order to buy in return American goods. At the same time he denied that the country had any mission of world restoration, believing that "our fortunate capacity for comparative self-containment . . . afforded . . . the firm foundation on which to build for our own security." It was "not an unworthy selfishness to seek to save ourselves, when the processes of that salvation are . . . not denied to others." Wilson had expressed a similar view, but he believed that Europe's economic salvation was dependent on outside financial and material support, as well as a moderate American tariff. Harding did not. Within a few months after taking office he signed the Emergency Agricultural Tariff, a bill similar to the one Wilson had vetoed, terming it irrational and unnecessary.

Since the turn of the century, American farmers had experienced prosperity, and the war pushed profits to

21Ibid.
especially high levels. However, prices on cotton, corn, wheat, and hogs began to drop rapidly after the conflict ended. By 1921 these commodities sold for one-third to two-thirds less than their war-time levels. This placed a heavy burden on the farmers who had opened new lands and purchased mechanized equipment in order to meet demands for increased production. Farm bankruptcy jumped from 6.4 per cent of all cases in 1920 to 18.77 per cent by 1924, and the average price for land fell from $108 to $76 per acre. Since there was no comparable deflation in the cost of his purchases, the agrarian's real income declined rapidly.

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25 Faulkner, From Versailles to the New Deal, 263-264.
Because of this depressed condition, the farmer began to look for a device to raise his prices. Believing that the tariff was responsible for much of industry's success he began to agitate for agricultural protection in order to restore his purchasing power and improve his standard of living.  

Since Harding proposed no program for agricultural relief, Senators William S. Kenyon of Iowa and Arthur Capper of Kansas, along with the Farm Bureau Federation, organized and promoted a legislative program. Operating on the assumption that the farmer's well being was fundamental to the nation's prosperity, twenty-eight Senators and ninety-five Congressmen formed hard core support for the Emergency Agricultural Tariff.  

This act was designed to combat falling staple prices until Congress could take time to incorporate higher duties into a general tariff. It placed high rates upon a long list of agricultural commodities and levied compensatory duties on cotton and woolen manufactures.

26 Soule, *Prosperity Decade*, 264.

to offset duties placed on staple cotton and wool. The sugar duty was raised to two cents a pound, the highest in many years. Enacted for only six months, these rates were extended until the Fordney-McCumber Tariff became law.

The Fordney Act, the first general revision of protection since 1913, forced Congress to turn to the Tariff Commission for information. The agency was particularly valuable in helping the House compose new chemical, textile, and agricultural schedules. Asked in July, 1921, to present its ideas on commercial policy and customs administration, the board had the satisfaction of seeing both reports incorporated into the new tariff, the latter almost verbatim.

The Senate Finance Committee used the Commission's staff even more extensively to help compose its recommendations. The agency scrupulously maintained non-partisan views, so much so that the staff members found themselves compiling information for whatever position a Senator

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29 Culbertson Memorandum, May 10, 1921, Culbertson Papers.

30 Culbertson Memorandum, July 1, 1921, ibid. Costigan to Taussig, July 19, 1921, Costigan Papers.
wanted to support. This was not always appreciated. Senator Frank R. Gooding of Idaho described the difficulties of the practice:

The most remarkable spectacle that I have ever seen occurs on the floor of the Senate every day. Experts sit with the Committee of Finance in the morning; they come into the Senate and divide up; one goes on the Republican side and the other on the Democratic side. I do not know what 'dope' they hand out to each Senator, but I know that Senators do not then agree, while I know that they did agree in the morning.

Gooding wanted the Commission abolished since it did little more than provide material for each Senator's point of view. However, this sentiment was not widespread. After the House had passed the new customs administration code, Costigan commented that "little if any of the old talk about abolishing the Commission is now heard in Washington." The agency's work on the tariff enhanced its reputation.

Neither the Emergency Agricultural Tariff nor the

31 Costigan to Taussig, July 20, 1922, Costigan Papers.
33 Ibid.
34 Costigan to Taussig, July 19, 1921, Costigan Papers.
Fordney Act helped agriculture. Both proved to be a "meaningless sop to the farmer." Agricultural prosperity depended on foreign demand, a market which declined as European nations increased their food production and turned to Argentina and Australia for such staples as meat and wheat. Further, by reducing foreign purchasing power, high tariff rates may have been responsible for lowered prices on pork, apples, winter wheat, and cotton seed oil.

There were also domestic causes for the farmer's declining prosperity. Dietary changes lessened consumption of wheat and corn, and the spread of machinery which reduced the worker's expenditure of energy lowered per capita food consumption. These phenomena, combined with expanding agricultural production, depressed prices severely.

The Fordney Act incorporated the Emergency Tariff's high rates on wheat, corn, and livestock, and allowed the

35 "Doubtful Aid for the Farmer," Literary Digest, LXVIII (January 8, 1921), 12.
37 Soule, Prosperity Decade, 232-234.
continued free admission of agricultural implements, but these were empty gestures. The United States produced these items as cheaply as any other nation. Potash remained on the free list, a genuine benefit to the farmer because it was a heavily imported product. Wool, which had been placed on the free list by the Underwood Act, was heavily protected, and its duty was assessed on the scoured fleece, as the Commission had recommended.

Manufacturing benefited most from the Fordney Tariff. Rates on cotton goods and hosiery remained at previous high levels, and chinaware, laces, toys, and pottery were heavily protected. Coal tar products, chemicals and dye stuffs duties were raised to extraordinary heights, reflecting the desire for more independence in munitions production.

The new act drew much adverse comment. The New York Times called it the "most prohibitive tariff bill that has ever been proposed in the American Congress," and so it was. Yet record high rates, while excluding...
certain items, did not alter the relative sales of foreign and domestic goods in the American market. High incomes during the decade more than offset the increased rates, and consumption of imported commodities remained at a high level. With the exception of chemicals and dye-stuffs no war-created industry received special attention. Further, the textile, agricultural, and chemical schedules were rearranged in a more logical order than ever before.

Nevertheless, Republican tariff policy ignored other nation's need to sell products to America. Unless Europe could gain a favorable balance of trade, she could not accumulate dollars and repay her war debts. Nor could she buy American goods. A sound commercial system required heavy American trade deficits to offset the United States' control of merchant shipping, cargo, insurance, and other services which foreign nations had formerly rendered to acquire dollars.

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Whatever the faults of the Fordney Act, it did revive the Commission's prestige and preserved it from Republican attacks. In addition, Congress expanded the agency's role in maintaining American commercial policies. Legislators, frightened at the prospect of foreign competition in American markets, had raised duties to very high levels in 1922, hoping to equalize the cost of producing goods in the United States and abroad. Supporters of this principle termed it the true standard of protection, though if achieved it would presumably prohibit trade on all dutiable items.\(^45\)

To maintain this guideline, Congress gave the President power to change the duty on any article up to 50 per cent of the established rate, or if necessary to shift the basis of assessment to the American selling price.\(^46\)

It also gave to the Commission the responsibility of determining costs of producing items in the United States and in foreign countries. Using this and other data, the agency was to advise the Executive on the amount of


increase or decrease in the tariff necessary to maintain
equality.\textsuperscript{47} This flexibility was to insure rates high
enough to protect domestic producers.

The flexible tariff provision, termed Section 315,
presented several economic and political difficulties. If
production costs were to be compared, what was a "typical"
manufacturer, the marginal or the most efficient producer?
At what point in the United States were two competitors,
one foreign and one domestic, to vie for the market, New
York or Chicago? How was the agency to gain access to the
accounting records of foreign companies in order to deter­
mine their production costs? Answers to these and other
questions had to be found if the flexible provision was to
work.

In addition, Congress, in delegating legislative
authority to the President, had to establish acceptable
guidelines for its application. Early efforts to make
this principle that of "equalizing the conditions of com­
petition" failed because some Senators believed it to be
too vague.\textsuperscript{48} Instead, Congress used the more specific

\textsuperscript{47}Ibid., 946-947.

\textsuperscript{48}U.S., \textit{Congressional Record}, 67th Cong., 2d Sess.,
1922, LXII, Part 11, 1190.
rule, "to equalize the costs of production" on items produced by American and foreign companies. 49

Some Congressmen felt that Section 315 gave to the President little discretionary power, particularly since his proclamations changing rates had to be preceded by a Commission investigation. However, he was not limited by the agency's actions. In ascertaining the cost of production, the President was instructed to take into consideration certain information, and "any other advantages or disadvantages in competition." 50 In effect, this gave him authority to consider any factors he desired and to act on whatever data he felt was valid. At his discretion, the Commission's advice might be legally ignored or reversed.

"Equalizing the costs of production" provided constitutional direction, while the order to consider "advantages or disadvantages in competition" gave the Executive the discretion he needed to protect domestic industry. Senator McCumber admitted that the rates written into the tariff were often higher than the comparative costs of production indicated, because "Congress' intent was to..."

49 Ibid., 11209, 11224.
50 U.S., Statutes at Large, XLII, Part 1, 942.
look after American interests."\(^{51}\)

A few Congressmen were worried that the President might move the rates upward, but Senator Reed Smoot of Utah reassured them. "I think there will be many, many more occasions when he will exercise it in lowering rates than in increasing them; in fact, if the conditions become normal, I expect the President . . . to lower . . . the majority of the rates."\(^{52}\) Smoot's words, whether or not sincere, helped gather support for the measure.

Congress also specified how ad valorem duties were to be assessed. If possible, adjustments were to be based on the cost of production. If this was unavailable, the President was to use the stated export value, and, in the absence of all foreign information, he was to use the American selling price.\(^{53}\)

Although interested in protecting manufacturers from foreign competitors, Harding probably supported Section 315 for political reasons. He, along with Senator \(^{51}\)U.S., *Congressional Record*, 67th Cong., 2d Sess., 1922, LXII, Part 11, 1194-1195.

\(^{52}\)Ibid., 1192-1193.

Smoot and Secretary of Commerce Herbert Hoover, believed that the Republican Party had to create the illusion of moderate protection in order to avoid a reaction by the electorate in 1922.\textsuperscript{54} Other party members who shared this view supported the flexible tariff.\textsuperscript{55} Even the Progressive element in the party, led by Senators Arthur Capper of Kansas and Irvine Lenroot of Wisconsin, backed the measure.\textsuperscript{56}

The President called it a device to assure the scientific and just administration of the tariff.\textsuperscript{57} Aware that other nations had to sell in the United States, he was nevertheless incapable of revising the Republican position on protection. Section 315 was a compromise with himself and a safeguard against political repercussions. What he really wanted was high protection, political

\textsuperscript{54} Culbertson Memorandum, October 12, 1921, Culbertson Papers; Roscoe B. Fleming to George W. Norris, August 19, 1926, MS of article sent to Norris in George W. Norris Papers, Manuscript Division, Library of Congress. Hereafter cited as Norris Papers.

\textsuperscript{55} Culbertson Memorandum, undated, Culbertson Papers.


\textsuperscript{57} Sinclair, \textit{The Available Man}, 251.
support, and European trade too.\textsuperscript{58}

Section 315 increased the Tariff Commission's work load without enlarging its powers. Prior to 1922 the agency had been organized solely for the purpose of accumulating raw data for Congress. Its statisticians, field investigators, and other personnel all operated from Washington. While special divisions had been created to coordinate the board's work, no one group had been assigned the duty of gathering information on foreign production costs. Divisions of transportation, law, imports and exports, preferential tariffs, and special commodities were involved primarily with the American market.

To handle the new duties some reorganization was necessary. The special divisions were expanded and new offices were opened in New York, Berlin, and Paris to serve as regional headquarters for the enlarged scope of operations. As before, the agency's overall direction came from Washington.\textsuperscript{59}

The Commission created a special administrative procedure for the flexible tariff. An Advisory Board was

\textsuperscript{58}Ibid., 218.

formed its function being to coordinate the technical, economic, and legal work of the different divisions, and to advise the Commissioners on particular studies.\textsuperscript{60} It was chaired by the Chief Economist and included the Chief Investigator, the head of the commodity division responsible for studying the item under consideration, and the Chief of the Legal Division.

An Executive Order of October 7, 1922, advised the Commission to establish rules and procedures for the implementation of Section 315.\textsuperscript{61} All applications for relief were to be submitted in writing to the agency. It reserved for itself the right to choose for investigation those cases which it felt affected the public interest, and asserted its power to initiate studies, again for the benefit of the public interest.\textsuperscript{62} Provision was also made for public hearings.

Normal procedure for conducting investigations requested under the flexible tariff clause was established


as follows: The application was sent first to the commodity division responsible for keeping data on the product under study. The division then issued a preliminary report to the Advisory Board, summarizing all available information relating to the article. The Advisory Board then formed its own analysis and sent it, along with the Commodity division's, to the Commissioners. Attached were recommendations either to continue or drop the inquiry.

The Commissioners then decided whether an investigation was warranted. If so, the commodity division prepared a complete program of work, subject to the Commission's approval, and a crew, working under the Chief Investigator, was assigned to gather information. Once accumulated the data was submitted to the Commissioners, who then held public hearings on the study.63

There additional information was elicited from interested parties who in turn had the opportunity to make exceptions to the preliminary data. Having gathered all the evidence, the Commissioners then interpreted it, and

submitted recommendations in writing to the President. According to law, he was free to follow their suggestions, ignore them, or act contrary to them, but he could take no action to change the duty on any item until the agency had completed its inquiry.

The same procedure occurred when the agency investigated complaints under Sections 316 and 317. The former clause provided for reprisals against unfair foreign competition in the American market while the latter allowed the imposition of penalty duties against the goods of countries which discriminated against American products. 64

The Commission's administration of these sections supported the popular impression that it raised or lowered specific duties. Many believed that it exercised broad powers and that it removed the tariff from politics by scientifically accumulating facts and recommending fair and accurate rates. But no judicial, legislative, or executive power had been granted to the agency. It was only a tool to be used by the President. It was the Executive who actually raised or lowered the tariff.

Many Progressives believed that the agency's

64 U.S., Statutes at Large, XLII, Part 1, 943-947.
implementation of Section 315 was the first step toward a scientific tariff. They were mistaken. Tariff policy remained in the hands of the party in power and flexed in whatever direction the President wanted it to. Edward P. Costigan should have been among the first to see the distribution of power embodied in the Act, for his training in law, politics, and reform had been extensive. His concern over Harding's and Coolidge's attitude toward the agency suggests that he recognized the power the Executive held over the Commission, but he was reluctant to accept it.

Costigan understood that the tariff was partly the result of post-war economic conditions throughout the world, but he also believed that the flexible provision was designed to lower duties once commercial stability returned. He hoped for an aggressive effort by the Commission in this direction. Believing that domestic manufacturers should compete with foreign companies in the American market, and that consumers could benefit from a

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66 Costigan Memorandum, about 1923-24, Costigan Papers.
lower tariff, he urged a liberal interpretation of Section 315 to permit the agency to select the items needing rate adjustment. Unconcerned with the possibility that such a program might arouse apprehensions and uncertainty in the business community, he argued that some indecision was preferable to the chaos which had resulted from periodic, radical tariff revision.

To this moral, tough-minded progressive, the Fordney-McCumber Act opened the way for the Commission to initiate tariff revision. It promised a welcome change from the generally dull routine which had characterized the board's activities since the end of World War I.

His arguments, usually well reasoned, aroused Harding and forced him to impress, personally, upon the Commission its subservience to the President. When Coolidge tried to pack the agency by abusing his right to make recess appointments, Costigan helped ignite a serious

67 Ibid.; Address to Buffalo Chapter of League of Women Voters, April 8, 1924, MS, ibid.

68 Costigan Memorandum, about 1923-24, ibid.
Creation of the flexible provision caused many Progressives to anticipate an era of scientific tariff reduction. Edward Costigan, anxious to expand the agency's activity and reduce trade barriers, realized that if these hopes were to be fulfilled, the Commission would have to detach itself from Executive control and maintain the outlook characteristic of its original appointees.

For this reason, the constitutional relationship between the agency and the President, its legal director, was one of the most important issues confronting the Commission. Costigan, aware of the dangers inherent in Executive direction, was quick to defend the board's independence.

His arguments, usually well reasoned, aroused Harding and forced him to impress, personally, upon the Commission its subservience to the President. When Coolidge tried to pack the agency by abusing his right to make recess appointments, Costigan helped ignite a serious constitutional struggle between the Executive and the Senate.
Harding and Coolidge based their treatment of the agency upon the theory that it was a Presidential body, responsible solely to the chief executive. They were unwilling to allow it to pursue studies which would embarrass the administration, or conflict with their policies. This was not an unreasonable position, and it was supported by the law governing Presidential relationships with executive bodies.

Nor was their handling of the Commission unique. Other agencies such as the Interstate Commerce Commission, which, unlike the tariff board, were designed to be independent of the President, also felt Executive influence. William E. Humphrey's appointment as Chairman of the Federal Trade Commission in 1925, completed a gradual change in that board's membership and altered its viewpoints so that it shared the administration's tolerant view of trade associations.\(^1\)

Humphrey's appointment also marked the end of the progressive's support for the Trade Commission,\(^2\) and


\(^2\) Ibid., 453-454.
Coolidge's treatment of the tariff agency tended to confirm their disillusionment with independent boards. As political discontent became more widespread, Edward Costigan took the opportunity to make public many of the problems which handicapped the agency's work.

A highly principled individual who often viewed power conflicts as struggles between good and evil, Costigan's defense of the Commission's independence tended to present Coolidge as an immoral antagonist. However, the real difference between the two was Costigan's fundamental devotion to a moderate tariff and the maintenance of the agency's freedom and prestige.

For this reason, and because several constitutional issues dealing with the Commission threatened his ideals, Costigan was quick to formulate legal defenses for his position, but with limited success. His dedication to high standards of government often embarrassed Coolidge, but it also caused Costigan to misconstrue part of the Fordney-McCumber law and produced friction within the agency.

By clinging to the belief that the tariff board was capable of yielding a scientific tariff, Costigan lost touch with other reformers. He maintained that the agency
could become an effective force if there were changes in personnel and an end to the President's direction. Other progressives—George Norris, Robert La Follette Jr., and Frank Taussig—realized that the Executive's appointive power alone precluded a non-partisan, "independent" commission. The law clearly made the Tariff Commission an instrument of the Executive.

The relationship between the Commission and the President was easily misunderstood. Newspapers, and even historians, sometimes assumed that the agency could change rates; this was a mistaken analysis. While Costigan recognized the actual distribution of power, he opposed the agency's narrow duties and its subordinate position to the Executive.

At first there was some reason to believe that Harding would allow the agency to follow an aggressive, independent course of action. At one point he stated the hope of cooperating with the board in making extensive use of the flexible clause. Furthermore, on October 7, 1922, Victor S. Clark, History of Manufactures in the United States (3 vols.; New York: McGraw-Hill, 1929), III, 330. Clark is not clear on this point. Neither is Arthur M. Schlesinger, Jr., The Crisis of the Old Order, 1919-1933. Vol. I of The Age of Roosevelt (3 vols.; Boston: Houghton Mifflin Co., 1964), I, 64.
he ordered all applications for relief to be filed with
the Commissioners, gave them permission to draw up their
own administrative rules, and indicated that they could
freely investigate items of their own choosing, even in
the absence of a written request.  

However, on the previous day, Harding had written a
private note to Thomas 0. Marvin stating that there would
be plenty to do without making inquiries into items other
than those specifically requested by outside parties.  

This directly contradicted his subsequent instructions to
the Commission, indicating a conflict in the President's
mind over the agency's proper role. He wanted it to be
active, but it was not to pursue studies which might
embarrass his administration.

The question of the board's independence was impor-
tant to Costigan, because he wanted it to publicize the
need for tariff reductions on important consumer items.
But no decision was made until the following spring. In
March, 1923, the Commission selected for study, on its own

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4U.S., Tariff Commission, Proceedings, October 29,
1922.
5Harding to Marvin, October 6, 1922, Costigan
Papers.
initiative, a group of some 40 items. Apparently warned by Burgess and Marvin that Costigan and the majority of the board intended to examine a large number of articles, Harding became alarmed. Extensive investigations could produce disagreement over the amount of protection needed on a few items, and might very well provoke a wide-ranging discussion of the whole protective system. The President, who did not want the tariff question reopened, charged that the Commission's program perverted the usefulness of Section 315, a device designed for only limited tariff changes. Harding also believed that the project threatened his control of the agency.

Vice-Chairman Culbertson wanted the Commission to pursue a dynamic, widespread investigative program which would attract public attention. He pointed out that a relatively small number of items were under consideration for study, and urged Harding to let the agency proceed.

Senators Irvine Lenroot, Charles Curtis, Representative

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6 Larkin, The President's Control of the Tariff, 22-23.
7 Culbertson Memorandum, March 4, 1923, Culbertson Papers.
8 Culbertson to Harding, March 4, 1923, Costigan Papers.
Homer Hoch, and Secretary of Commerce Herbert Hoover made similar requests. 9

Unimpressed, Harding asked the Justice Department for a statement on his authority over the board. He viewed it as an agency responsible to the President, not to the public, or to particular business interests. 10

The issue continued unresolved through most of March while the Commission processed written requests for investigations. 11 On the 27th, Harding, suddenly concerned at increasing protests over the rising price of sugar, ordered an inquiry into the correlation between sugar duties and inflated consumer's costs. 12

The agency complied, but it was clear to Costigan and Culbertson that this directive set a precedent seriously limiting the Commission's ability to publicize needed tariff changes. 13 If the President had the right

9Culbertson Memorandum, March 4, 1923, Culbertson Papers.

10Harding to Culbertson, March 5, 1923, Costigan Papers.

11Tariff Commission to Harding, March 17, 1923; Harding to Tariff Commission, March 18, 1923, ibid.

12Harding to Tariff Commission, March 27, 1923, ibid.

13Marvin to Harding, March 27, 1923, ibid.
to initiate specific studies whenever he chose, the board's freedom was ended. Costigan's alarm was not shared by Marvin and Burgess. While reluctant to support reductions in sugar duties, the two Harding appointees were willing to use Presidential direction to prevent inquiries which might lead to additional attacks on protection.  

Harding resolved the matter at a meeting with the Commissioners in late April. A public statement, issued the following day, declared that they had agreed that "where no petition has been filed . . . the Commission, after conference with the President . . ." could order any studies it felt the public interest warranted. The President had his way. Unless he gave consent, only inquiries on application were to be initiated, and even those were subject to further possible restrictions through his directive power.

Costigan strongly opposed Harding's assertion that

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14 Larkin, The President's Control of the Tariff, 21.

15 Public statement to press, April 21, 1923, copy in Costigan Papers. Culbertson recorded that the cabinet was taking sides in the matter, but did not mention who supported Harding. Culbertson, Diary, March 24, 1923, Culbertson Papers.
the Commission was an Executive tool. 16 The Coloradan believed that its status was that of an independent board which set its own standards of operation. 17 There was no legal foundation for this contention, and Harding's view was correct, but Costigan, believing that the agency, by elevating its stature to that of the Interstate Commerce Commission, could lead a movement for genuine tariff revision, wanted freedom of action.

While outwardly the Commission appeared to work in harmony, and Costigan endorsed a public statement issued by the agency which denied the existence of internal discord, 18 his views clearly contradicted those of his Republican colleagues. So long as Harding was alive, dissension between the board and the Executive remained within reasonable limits. This was largely due to the President's desire to allow the group as much latitude as possible. When Calvin Coolidge assumed office, this initiative was seriously curtailed.

16 Costigan Memorandum, April 21, 1923, Costigan Papers.

17 Ibid.

Costigan, aware of the importance of the new president's attitude, wrote Culbertson in August that Coolidge had not declared himself with respect to the Commission's work. "It is evident that he should be talked with at the earliest possible date."\(^{19}\) Less than a month later, the Vice-Chairman sent a long letter to the Executive reviewing the flexible tariff's history and citing the relationship established between the board and Harding.\(^{20}\) However, he failed to emphasize the fact that in the last months of the previous administration, Marvin had limited the agency to two investigations.\(^{21}\)

Shortly afterward, in a conference with the Commissioners, Coolidge made his views clear. The flexible clause was a constructive device to eliminate disorderly legislation, he stated, but like Harding, he did not regard it as an instrument for broad revision of the

\(^{19}\) Costigan to Culbertson, August 10, 1923, Costigan Papers.

\(^{20}\) Culbertson to Coolidge, September 5, 1923, ibid.

\(^{21}\) Culbertson to Harding, May 24, 1923, Costigan Papers; Culbertson, Diary, June 20, 1923, Culbertson Papers.
Unabashedly committed to the business community, the President was reluctant to reduce protection, whatever the justification. Having inherited a prosperous nation, he was content to make only token readjustments; anything more might upset the economy and weaken his political strength.

Nor did Coolidge have illusions about the Commission's responsibilities. It was not a court, nor were the Commissioners judges. They were a fact-finding board to help the President. Responsible to the nation for maintaining prosperity, Coolidge insisted that, whatever the opinions of individual members, all executive agencies follow his policies.

Costigan's views were directly opposed to the President's and the dispute smoldered until the following year. In the fall of 1923, the Bloedel-Donovan Lumber Company asked for a reduction in the duties on logs. These rates had been imposed as penalties against foreign

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22 Costigan Memorandum of Conference, September 19, 1923, Costigan Papers.

companies engaged in unfair trade practices. After some deliberation, the Commission decided that because of the punitive nature of the tariff in question, it could not conduct an investigation. Furthermore, since the logs had not been originally subject to a normal duty, there was no provision under Section 315 which enabled the President to transfer them from the free list.

Costigan opposed the decision to turn down Bloedel-Donovan's request. He felt that this denied the President his authority to change rates under the flexible tariff provision. Nevertheless, on October 20, 1923, the agency informed Coolidge of its decision.

The President, anxious to preserve his constitutional privileges, asked for a legal opinion. The Attorney-General's view supported the Executive's power to issue proclamations as Costigan had urged, but at the same time undermined the Colorado progressive's position on the agency's prerogatives. The "act of 1922 . . . has not

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25 Coolidge to Marvin, October 29, 1923, Costigan Papers.

changed the status of the Tariff Commission . . . the powers of that tribunal remain limited to the ascertainment and report of facts." 27

The agency had misjudged its discretionary power. It could not refuse to make studies the President requested. 28 Costigan rejected this ruling. He wanted to preserve the Executive's power to declare changes in tariff rates, but he opposed external direction and control of the Commission. Though Coolidge occasionally ordered particular studies and treated it as his own instrument, Costigan continued to call it a quasi-judicial body. 29

This particular conflict was not resolved until Costigan left office. However, long before this time, the President's handling of the Commission had produced new issues and far more publicity.

Given Coolidge's view of the agency, it was natural for him to appoint men who agreed with his interpretation

of tariff policy and executive prerogatives. Control of the board was one of his major aims. Since the Tariff Commission was simply a fact-finding group, the President could not be rightfully charged with infringing the liberty of an independent regulatory body, or with packing a semi-judicial agency. Other appointments, particularly those to the Federal Trade Commission and the Interstate Commerce Commission, were more serious because those agencies had been created to act in a non-partisan fashion.

The President's right to direct the Tariff Commission was clearly established by the Supreme Court in Shurtleff v. United States. In this case, decided in 1903, the court had held that President McKinley could summarily remove an officeholder from his position as general appraiser of merchandise. "It would be a mistaken view," the Court had ruled, "to hold that the mere specification in the statute of some causes for removal restricted the Executive's right to dismiss an officer he had appointed." The Tariff Commissioners, appointed by the President for varying terms, clearly came under this ruling. In deference to Congress, Coolidge moved

30 189 U.S. 311 (1903).
cautiously, but he could have legally removed all of the agency's members whenever he wished.

In three years, Harding had filled three vacancies on the Commission with high protectionists: William Burgess, a pottery lobbyist; Thomas O. Marvin, an officer of the Boston Home Market Club; and Henry H. Glassie, a Virginia lawyer who was closely associated with sugar producing interests in Louisiana. There had been little public or congressional reaction to these appointments. However, when Coolidge attempted to force two members off the Commission to make room for new appointments, he stirred up considerable controversy. Costigan, viewing this as a move to destroy the board's integrity, opposed the President and Chairman Thomas Marvin.

The first evidence of Coolidge's intentions came in late 1924. In the summer, David J. Lewis, a moderate protectionist and a Wilson appointee, had voted to reduce the duty on sugar. In early September, the New York Times revealed an organized movement by the National Tariff Council of Denver to block Lewis' reappointment. The Council, which represented Colorado sugar-beet growers,
was led by Jesse F. McDonald, former Governor of Colorado and a political enemy of Costigan.

The Colorado Commissioner immediately went to work to prevent Lewis' removal. In a letter to The Denver Post, he charged McDonald with trying to pack the "tariff court of the country." In 1924, Congress had passed a rider to an appropriation bill which excluded members of the Commission from participation in investigations in which they held a direct and substantial interest, and Costigan claimed that this was clear evidence that the agency had a fact-finding, quasi-judicial function. It could operate properly only if it were free from political influence and other outside pressures.

In defending Lewis, Costigan broached a problem which he never resolved. If the Commission only collected facts, it made no difference who sat on it. On the other hand, if the data required interpretation, Costigan had no assurance that his views were the more valid. The answer to this difficulty lay in the President's power to appoint men to the agency who supported his policies. Since it

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32 The Denver Post, September 8, 1924.
33 Ibid.
was his responsibility to make changes in the law, Coolidge had every right, perhaps even a duty, to let Lewis go and replace him with someone amenable to the administration's views.

There was, however, the danger that Lewis' removal would irritate Democratic and progressive Senators, giving them an excuse to delay confirmations of the President's other appointments. For this reason, and because Culbertson had spoken highly of Lewis' service,\(^34\) Coolidge made the reappointment. However, he wanted an undated, signed resignation from Lewis,\(^35\) and when the Marylander refused, the President let it be known that he could remove any Commissioner whenever he chose.\(^36\)

Coolidge was reluctant to keep Lewis and hoped to eliminate him from the Commission as quickly as possible. He reappointed him temporarily only because it was expedient to do so. The President wanted personnel on the board who reflected his views. Culbertson speculated that the

\(^34\) Culbertson Memorandum, September 8, 1924, Costigan Papers.

\(^35\) Extract from Whaley-Eaton Service American Letter, No. 387, January 30, 1926, ibid.

\(^36\) Culbertson to Costigan, September 9, 1924; Costigan to Taussig, October 14, 1925, ibid.
decision to keep Lewis indicated that Coolidge had accepted the agency as a non-partisan body, but this was erroneous. 37

Coolidge's power to remove any of the Commissioners at will was upheld two years later, in *Myers v. United States* (1926). Frank Myers, a postmaster appointed by Wilson in 1917, was removed from office by the President in 1920, without consultation with the Senate. The Supreme Court held that the "power to remove inferior executive officers, like that to remove superior executive officers, is an incident of the power to appoint them, and is in its nature an executive power." 38

It is interesting to note that the Commission did not gain immunity from executive power nine years later in the case of *Humphrey's Executor v. United States* because it dealt only with independent agencies, whose officers possessed legislative and judicial powers. 39 William E. Humphrey, appointed as head of the Federal Trade Commission in 1925, was removed in 1933 by Franklin D. Roosevelt.

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37 Culbertson to Costigan, September 9, 1925, *ibid.*

38 272 U.S. 161 (1926).

In restricting the President's removal power, the court emphasized that the Federal Trade Commission's duties were performed without Executive control, a condition not applicable to the Tariff Commission.\(^40\)

Nor did the later decision of *Wiener v. United States* (1958) modify the agency's position.\(^41\) Here, in overruling President Dwight Eisenhower's removal of Wiener from the War Claims Commission, Felix Frankfurter stated that the Humphrey case drew a sharp cleavage between officials who were part of the executive establishment and those who were to exercise judgment "without the leave or hindrance of any other officer or any department of the government."\(^42\) The Tariff Commission clearly did not exercise independent judgment.

The Myers decision must have disappointed Costigan, for he had made inquiries into the possibility of contesting the President's right to remove federal officers.\(^43\) His hope of pushing the Commission into an active program

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\(^{41}\) 357 U.S. 349 (1958).


\(^{43}\) Costigan to Lewis, July 20, 1926, Costigan Papers.
of tariff revision was severely handicapped by the court's decision. The spring of 1925, Lewis' recess appointment expired and Coolidge succeeded in luring William Culbertson to a diplomatic post in Roumania, a job the Kansan had been seeking for some time. About all Costigan could do was accuse Culbertson of "selling out," for there was now a majority on the Commission opposed to the Coloradan's views. He was the sole survivor of Wilson's original appointments.

The resignations of Culbertson and Lewis did not complete the process of filling the agency with personnel who supported the administration's program. Resignations due to ill health, new opportunities, and weariness meant that more men with Coolidge's views would have to be found. In placing partisans on the Commission, Coolidge forced a contest with the Senate for the right of his appointees to hold office solely under a temporary appointment. A recess appointment was defined as one made to fill a vacancy which happened to exist after the Senate

Costigan Memorandum, April 23, 1925, ibid.
had adjourned. Coolidge's difficulties began in June, 1925, when he issued A.H. Baldwin, former chief of the Bureau of Foreign and Domestic Commerce, a recess appointment. It was a poor choice. Costigan commented that he was one of the "least communicative men I have ever met in public office." However, Baldwin was in ill health. By Christmas, he had slipped dangerously and Costigan, fearing that Coolidge planned to send a sick man's name to the Senate for confirmation, brought the matter into the open.

At the end of the month he made a speech to the American Economic Association in which he reaffirmed his belief in the usefulness of the Commission once it was removed from partisan politics, and among other things, he suggested that the Senate refuse to confirm Baldwin until the Commission was investigated.

Baldwin's recess appointment was allowed to expire. On June 23, 1926, Sherman J. Lowell, former member of the

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46 Costigan to Taussig, October 28, 1925, Costigan Papers.
New York Grange, was nominated to fill the vacancy. When
the Senate failed to confirm this assignment, Coolidge
extended Lowell a recess commission on July 6, 1926.\footnote{Decisions of the Comptroller General, VI, 147-149

The third member involved in Coolidge's fight with
the Senate was E.B. Brossard, a friend of Senator Reed
Smoot and a supporter of a high tariff. He was nominated
on July 9, 1925, to fill Culbertson's position, and accord­
ing to law, drew his salary until the end of the next
session of the Senate, July 3, 1926. On that day he
received another recess appointment.\footnote{Ibid.}

The Senate's failure to confirm Baldwin, Lowell, and
Brossard was no oversight. Costigan's speech before the
Economic Association prompted closer scrutiny of Coolidge's
handling of the agency and many Senators opposed the
nominees because they felt the President had destroyed the
Commission's non-partisan image. On March 11, 1926,
Senator William H. King of Utah, attempted to amend an
appropriations bill to cut off the salary of any Commis­
sioner serving under a recess appointment unless he was
confirmed before the end of the session. 49

This was already provided for by law; King's proposal was a hostile gesture to Coolidge, and evidence of growing concern by Democratic and progressive Congressmen over the President's harassment of the board. Joseph T. Robinson, Senate minority leader, had already secured approval for an investigation of the Commission, and King's motion made it clear that the two appointments had no chance of confirmation.

The President, angered by the Senate's treatment of his selections, extended new recess appointments to Brossard and Lowell immediately after Congress adjourned. In conversations with Senators Robinson and Charles Curtis of Kansas, he suggested that the Senate remain in session until it confirmed the appointments. The embarrassed and doubtless angered legislators replied that it was the President's problem, not theirs. 50 A struggle was developing between the legislative and executive branches of government.


50 John Bethune to Costigan, July 6, 1926, Costigan Papers.
Finally, on August 21, 1926, the dispute was resolved. The Comptroller-General ruled that neither Brossard nor Lowell could draw any salary until their appointments had been confirmed. Under law, the President could assign a man to a position while Congress was not in session, but when it reconvened the Senate had to confirm the selection before it adjourned or the office was automatically vacated and no salary could be paid to any subsequent appointee until he was confirmed in his position. Brossard and Lowell had been appointed to a vacancy which existed while the Senate was in session, the previously unconfirmed recess appointment not having filled the office. Therefore, they could not be paid. Eventually, the two men were nominated again and confirmed in office on March 1, 1927. Senate approval was hastened by Coolidge's appointment of Lincoln Dixon, an Indiana Democrat, to another position on the board.

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Coolidge lost this struggle with the Senate. One reason for his failure was Costigan's public accusations, for Democrats and progressive Republicans who had supported the flexible tariff in 1922 were quick to react to charges that Coolidge was "packing" the Commission. While this was an inaccurate indictment and certainly irrelevant in view of the agency's functions, it gathered support for Costigan's crusade against Executive interference with the board.

Other constitutional issues threatened to undermine the Commission's effectiveness. The first was the question of the agency's ability to hold hearings and issue findings, subject to judicial review, on charges that foreign competitors were engaging in unfair trade practices. While the President was the only officer who could impose penalties under Section 316 of the Fordney Act, the Commission was required to make recommendations before he acted. 55

On December 16, 1925, the Bakelite Corporation

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55 U.S., Statutes at Large, XLII, Part 1, 944.
filed charges with the Commission claiming that foreign producers were infringing their patent rights by selling synthetic phenolic resin (form C) in the United States without acknowledging its control of that process. The agency ordered an inquiry under the provisions of Section 316, and the President issued a proclamation temporarily barring the entry of the goods involved in the charges. Eight months later, the board reported to Coolidge that two of the patents upon which the complaint was based would expire on December 6, 1926, and it asked that the exclusion order be rescinded. This was done.\textsuperscript{56}

While the Commission was investigating Bakelite's charges, Fisher and Co., Inc., one of the foreign firms involved in the controversy, decided to question the agency's jurisdiction over patent controversies.\textsuperscript{57} Costigan had some doubts about the issue and suggested that the board seek an opinion from the Attorney-General. The Coloradan pointed out that a District Court decision in \textit{Lowry v Hert}, (1921) had held that the federal courts held exclusive jurisdiction in any case where title to a

\textsuperscript{56}Costigan Memorandum of Bakelite Controversy, May, 1927, Costigan Papers.

\textsuperscript{57}273 Fed. 698 (1921).
patent or any claim of infringement against it was the subject of a suit. Should this position be upheld in other courts it could bar the Commission from one of its assigned duties. The agency agreed with Costigan's suggestions and a legal defense of Section 316 was drafted and presented in the Court of Customs Appeals.

Before the Court ruled on the issue raised by the Fisher Co., the Bakelite Corporation filed a protest questioning its jurisdiction. The corporation had benefited from the Tariff Commission's ruling and wanted the agency to retain its authority in future cases.

Bakelite insisted that the issue before the Court did not constitute a case or controversy within the meaning of Article III, Section 2 of the Constitution. The Court rejected this contention in a decision delivered in early 1928. Relying on Muskrat v. United States, (1911) which defined a case or controversy as "claims of litigants brought before the Courts for determination by such regular proceedings as are established by law or custom for

58 Costigan Memorandum, May, 1927, Costigan Papers.
the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs." the Court of Appeals ruled that since real parties whose rights and status were affected by the litigation were present, a case did exist.

This was the key issue in Bakelite's protest, for both it and the Fisher Company conceded that the Court was an inferior one, created under Article III, Sec. 8, and capable of hearing cases brought before it. The Court then decided that the Commission had jurisdiction to determine whether unfair foreign competition was being practiced in the home market, even in patent cases. Lowry v. Hert was ignored since Congress had established the agency's jurisdiction in legislation passed in 1922. While the Commission had no power to enforce its findings, the Court held that they were subject to judicial review.

The prestige and authority which the Commission derived from this decision were undermined by a Senate

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60 219 U.S. 346 (1911).

61 In re Fisher and Co. (Inc.) et al, 16 Ct. Customs Appeals 204-205 (1928).

62 Ibid., 196.

63 Ibid., 213.
investigation, begun in 1926, which was highly critical of the agency. However, Costigan had successfully alerted the Commission to the judicial challenge presented by Fisher and Co. This indicated once again his devotion to the board and the possibility that it could claim an area of authority and competency free from Executive domination.

One other major constitutional question affected the Commission, the crucial issue of the flexible tariff's validity. During Congressional debates on the Fordney-McCumber Act various points of view had been presented criticizing the guidelines suggested for the President's action under Section 315. Some Senators had argued that the phrase, "to equalize the conditions in competition between foreign and domestic producers" was too vague and difficult to implement. They pointed out that there was no provision for judicial review of the Executive's action under the flexible clause, and asked that Congress accept the more definite standard "to equalize the difference in cost of production." 64 There were difficulties in applying even this, but it was more specific. 65

64 U.S., Congressional Record, 67th Cong., 2d Sess., 1922, LXII, Part 7, 6494-6495.
65 Ibid., 7089-7098.
One difficulty in employing the flexible provision was the problem of securing enough data to determine differences in costs of production. Domestic and foreign producers were hesitant to release trade information and production figures which might weaken their competitive positions. In addition, effective implementation was limited by the administration's interpretation. Coolidge viewed it as a device for raising the tariff, and Chairman Thomas Marvin thought it was an unconstitutional delegation of legislative authority.66

Costigan opposed both views. He pointed out that Congress' intention was clearly stated in the statute and that the flexible tariff was designed to lower as well as to raise duties. As for the laws validity, he argued that the standard assigned was clear and legal. It was true that the determination of costs of production required a judgment of the accumulated data, but he pointed out that all facts of life were subjective; it was their reasonableness which made them factual, and in law reasonableness had been used to give validity.67 He cited the power of

66 Bureau of the Journal of Commerce, April 28, 1925, clipping; Editorial in Farm Stock and Home, October 1, 1924, clipping, in Costigan Papers.

67 Field v. Clark, 143 U.S. 692 (1892).
the Interstate Commerce Commission to fix "just and reasonable" rates as an example of how similar commissions operated, and declared that the Tariff Commission only applied the standards set by Congress to existing conditions.

In using the Interstate Commerce Commission as an example, Costigan overlooked its completely different composition and powers. The Tariff Commission declared its findings, but the President was free to disregard them. He could even act contrary to them if he chose. The Interstate Commerce Commission had never been subjected to this type of control and after the Hepburn Act of 1906, its rate-setting powers were restrained only by the courts.

However, Costigan's defense of the flexible tariff provision was sound, and in *J.W. Hampton, Jr., and Company v. United States* (1928), the Supreme Court held that Congress' intent in creating Section 315 was clear. The

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68 Costigan Memorandum, undated, Costigan Papers.

69 Costigan Speech to National League of Women Voters, Buffalo, April 24, 1924, *ibid*.

70 276 U.S. 404.
Commission only ascertained differences in costs of production. While these were difficult to determine, Chief Justice Taft held that the goal was specific and intelligible. Neither the Commission nor the President were to decide what the law should be, and thus Congress' action was a valid exercise of legislative power. 71

Again Costigan had correctly interpreted a constitutional question and contributed to the Commission's prestige. The court's decision might have been even more significant had it not been for the Senate investigation which was discrediting the board.

Costigan had sought legal sanction for his belief that the Tariff Commission should be treated as an independent agency, capable of formulating its own policies. Constitutional controversies affecting the board destroyed that concept, for the Supreme Court clearly held that the Commission was a fact-finding body acting under Executive direction.

On the other hand, court decisions did uphold the board's jurisdiction over cases resulting from unfair foreign competition, and the constitutionality of the

71 Ibid., 409.
flexible tariff provision. Further, Costigan succeeded in arousing Congress to oppose Coolidge's efforts to pack the agency, and though the President eventually controlled its membership, his abuse of recess appointments was checked.

Executive instrument or not, progressives and Democrats were offended by Coolidge's attempt to make it a partisan agency, and the Senate was particularly incensed with the President's attempt to sidestep its right to confirm Executive appointments.

Failure to limit Coolidge's powers meant that the Commission could not function as an independent advocate of tariff revision or as a non-partisan source of tariff information. To compound this failure, friction within the agency over policy issues forced Costigan into an increasingly isolated position. Since he would not abandon this posture, nor leave the board, his relations with other Commissioners degenerated. As a result the agency nearly ceased to function, and public disclosure of this state of affairs led to a Senate investigation which forced Costigan to leave the board.
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CHAPTER V

THE STRUGGLE WITHIN

The Republican Party, on returning to power in 1921, wasted little time in reversing the nation's tariff policy. Whereas the Underwood Act had been designed to force domestic industry into competition with foreign producers, and allow other countries to sell in the American market, the Fordney-McCumber Tariff embodied the more traditional policy of high protection.

Republicans adopted the classical arguments of protection. New industries had to be sheltered until they matured enough to supply the nation's need for their products, labor had to be guarded from ruinous wages which prevailed abroad, and the domestic market had to be isolated from foreign-based economic dislocations.

Some industries deserved special treatment because they were essential for defense. In this case there was no effort to justify protection under the "infant industry" argument. National security required that these enterprises be subsidized, whatever the cost.

Harding and Coolidge subscribed to these economic arguments to justify protection, but they also had...
political reasons for maintaining a high tariff. Both strongly supported the business classes of the country and manufacturers associated the tariff of 1922 with the decade's prosperity. Any readjustments might cause unsettled business conditions. Therefore, neither Harding nor Coolidge wanted to bring up the issue while they were in office.

Edward Costigan was critical of Republican protectionist doctrine and eager to publicly discuss the issue. As a progressive reformer who held strong feelings about the rights of the consumer, he suspected that many of the traditional arguments were false. He believed that labor's wages were related to its productivity, not the tariff, or that they would be if the working population was organized. He was also aware that most "infant industries" never considered themselves as having left "childhood" when reformers proposed rate reductions. As a result, the consumer seldom benefited from a high tariff.

Costigan did not believe in free trade. He was willing to let marginally efficient industries languish if the cost of maintaining them was too great. What he wanted was the elimination of excessive tariff rates, which he defined as duties above the level needed to allow
an industry to meet foreign competition. Protection which exceeded this amount forced the consumer to pay an additional, unnecessary tax to support enterprise. For this reason, and because he realized that foreign nations had to sell in the American market, Costigan supported the Tariff Commission's assignment to investigate the costs of producing goods in the United States and in other countries.

A tariff which equalized, or tried to equalize, differences in costs offered the consumer the greatest benefit possible under a protective system. Simultaneously, it had little detrimental effect on labor's wages, while affording sufficient protection to domestic industry, and allowing foreign producers to sell in the American market. It was true that this tariff theory prohibited trade on dutied items, because it would not be profitable for other nations to sell here. But in practice it operated as a device to secure lower rates on specific items and offered an adequate measure of protection.

Costigan objected to the views of Coolidge and of his appointees to the Tariff Commission. There were bound to be politically motivated differences of opinion over the board's policies. The Coloradan fought to preserve
what he considered to be its proper functions.

For a time, David Lewis and William Culbertson shared this fear of disruptive political influences, but after the spring of 1925, Costigan was virtually alone, finding only occasional support from Alfred P. Dennis. The latter, a personal friend of Coolidge, tried to uphold the administration's viewpoint as frequently as possible. But in many cases he could not. A Democrat with moderate protectionist views, Dennis was interested in pursuing some tariff revision under Section 315, and the persistence of Marvin in defense of high protection often forced him to side with Costigan.

Marvin, who had been appointed Chairman in 1921 by Harding, was supported by three Republican colleagues. They were all high protectionists, Marvin being the most extreme. As he once put it, allowing "imports into the United States is like ceding a portion of the national domain."¹

Henry Glassie's appointment to the Commission, in March of 1923, had elated domestic sugar producers because he had close contacts with Louisiana cane growers.

¹Costigan Memorandum, July 23, 1925, Costigan Papers.
Because his wife was the daughter of former Senator Donelson Caffrey, of Louisiana, Glassie was expected to support sugar tariffs as strongly as his father-in-law had.  

William Burgess, appointed in 1921, had been Secretary of the Potters Association and an effective lobbyist, for which, it was charged, he received 50 cents on every potter's oven fired in the United States. He was a poor choice for a commission which dealt extensively with manufacturers in foreign countries. Burgess had participated in a Treasury Department survey of the French ceramic industry in 1907 and was subsequently charged with having used privileged information to undercut French competition in the pottery market.

E.B. Brossard had worked in the Commission's agricultural division from September, 1923 to July, 1925, the time of his appointment. His preparation included a

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3 Wright, Tariff Making by Commission, 24.

4 American Consul W.F. Doty to American Embassy, March 29, 1921, Costigan Papers.

5 Gilbert Hirsch to Thomas Marvin, November 28, 1923, ibid.
Bachelor's degree in economics from the University of Utah, and graduate work at Cornell and the University of Minnesota. Senator Reed Smoot and Secretary of Agriculture Dr. W.M. Jardine sponsored his selection.

Marvin and his supporters were not interested in tariff reductions. Costigan found it impossible to agree with their policies. This split the Commission into two factions, Costigan and Dennis being constantly in the minority.  

By far the most controversial part of the Commission's duties was its work under Section 315. In over two and a half years, 430 applications for relief were filed with the agency; only 47 were acted upon, and, of these, eight were completed and sent to the President. This poor performance, along with the board's failure to study the tariff's effects on industry and labor, forced Costigan into an increasingly hostile attitude. Concluding that the Commission was filled with hopelessly biased

6 Wright, Tariff Making by Commission, 24.


8 Costigan Memorandum, May 8, 1924, Costigan Papers.
men who were intent on destroying its true functions, he viewed his conflict with them as a "fundamental issue of government and public morality." He vowed to continue the struggle, even though the agency might be ruined in the process.  

The first investigation conducted under Section 315, the Wheat Report, brought this fight into the open. Despite the Emergency Agricultural Tariff and the Fordney-McCumber Act which had fixed the wheat duty at 30 cents per bushel, Canadian grains poured across the border.  

On November 1, 1923, Sydney Anderson, President of the Wheat Council of the United States, filed an application with the agency asking for a higher rate.  

Marvin told Coolidge that an inquiry under the flexible tariff could not help the wheat producer because of the time consumed in investigating and compiling data on which to base recommendations. However, the President asked the Commission to proceed in order to indicate his
sympathy with grain farmers.\textsuperscript{12} The report, delivered to Coolidge in early March, revealed a split in the Commission. Costigan, Culbertson, and Lewis recommended a slight increase, based on an examination of foreign costs for a three year period. Burgess and Marvin, confining their data to one year's production, asked for a much greater increment.\textsuperscript{13} The choice of different time segments reflected the two group's biases toward the tariff issue and gave each the evidence needed to support its position.

Because of the divergent opinions, Coolidge was reluctant to release the study to the public.\textsuperscript{14} Instead, he issued a statement pointing out the confidential character of certain materials submitted to him under Section 315, and declared that the Commission would later publish a summary of its report.\textsuperscript{15} Costigan immediately stated objections to this

\textsuperscript{12}Coolidge to Tariff Commission, November 13, 1923, \textit{ibid.}


\textsuperscript{14}Culbertson Memorandum, March 21, 1924, Costigan Papers.

\textsuperscript{15}Costigan Memorandum, March 21, 1924, \textit{ibid.}
procedure. Unless the Commission's work were publicized, it could not provoke public support for tariff reduction. He claimed that the President had an obligation to reveal publicly the alternatives suggested by the agency. On March 24, 1924, perhaps because of Costigan's dissent, Coolidge released the report. The board immediately had 1,000 copies printed for distribution.

The Wheat Report produced another conflict within the agency, one which again brought Coolidge into the board's controversies. The problem was whether transportation charges should be included in computations of production costs. Transportation was a large factor in a foreign manufacturer's expense of competing in the American market. If this data were included, it would often justify a lower duty. For this reason, Costigan, Culbertson, and Lewis wanted to use this information. Since Marvin and Coolidge favored protection, they did not.

Costigan and his colleagues argued that subdivision (c) of Section 315 instructed the President to consider

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16 Ibid.

any factors which affected competition between foreign and domestic producers. Marvin opposed this construction, arguing that the agency's authority to include transportation was not specifically spelled out and was of questionable legality. He also asserted that the term "cost of production" was used, in part, because it was narrow enough to preclude the use of transportation and other costs. In his opinion there was no relation between subdivision (c) and the main body of Section 315.

Costigan and his colleagues won a questionable victory when Coolidge proclaimed an increase in the wheat duty to 42 cents per bushel, the amount they had advised. Costigan noted that if the Commission had not included transportation, its recommendations would have been even less than the 12 cents per bushel. This was due to the higher rates American farmers paid to ship their wheat to markets in comparison to their Canadian competitors relatively low expense for the same service. Since transportation raised the United States' producer's total costs, 

18 U.S., Statutes at Large, XLII, Part 1, 943.  
20 Ibid.  
21 Ibid., 71.
wheat was eligible, under Section 315's dictum to equalize the cost of production, to receive more protection.

Considering Coolidge's desire to do something to please wheat farmers it is probable that he accepted the use of transportation because it justified a higher duty. While Marvin and Burgess had recommended even greater increases, the President had to follow the majority's suggestions if he wanted to act without stirring up public controversy.

A year and a half later, the transportation issue arose again. The Commission recommended higher duties on gold leaf, print rollers, and halibut. If transportation was not used in determining relative costs of production, the agency suggested a small increase in the duty on print rollers and a reduction on gold leaf. Halibut was not affected since American and foreign transportation costs were about the same. 22

In the case of gold leaf, the burden of transportation was with the foreign manufacturer, for his shipments to the United States exceeded in cost those of the domestic producer. This made the total cost of foreign gold

22 A.P. Dennis to Coolidge, February 8, 1926, Costigan Papers.
leaf greater than the American product. The flexible tariff principle thus indicated a reduction in duty. The same factors limited the increase in the duty on print rollers.

Coolidge wanted higher tariffs on all three items. After consulting with Marvin, the President asked the Attorney-General for an opinion on the Commission's use of transportation. The agency's Legal Division prepared briefs for both sides of the controversy.

To force a fair presentation of his views, Costigan asked the legal staff to prepare a memorandum setting forth arguments in favor of the Commission's use of transportation. He was suspicious of the agency's technical personnel. The previous March he had learned of a severe split in the Economic Division, and he had no reason to believe that other personnel had escaped the factionalism sweeping the board.

The Colorado reformer wanted the Attorney-General

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23 Marvin to Coolidge, October 6, 1925, ibid.
24 Legal Division to Costigan, November 13, 1925, ibid.
25 Costigan to Legal Division, November 12, 1925, ibid.
to rule that the agency had to include transportation data in its investigations under Section 315. This would lead to a general reduction in the tariff. Costigan realized that transportation rates were inextricably tied to the cost of producing and marketing a product. His experience in his home state as a critic of the basing point system used in establishing freight rates had made him an expert on the subject of transportation costs and their impact on consumer prices.  

He studied the debates in Congress on the Fordney-McCumber bills to find support for his opinion. This tactic was disappointing. Senator Irvine Lenroot of Wisconsin had argued that to include transportation costs as a part of the expense of production might allow producers in the Far West to claim charges into markets they had never before penetrated. Senator Frank R. Gooding of Idaho took the opposite view, stressing the barriers against western producer's entrance into the national market.
market. Each took a position in the interests of his constituents.

There was, however, another argument which justified the use of transportation data in estimating production costs. Subsection (c) of Section 315 allowed the President to take into consideration whatever factors he felt were necessary to maintain equal conditions of competition between American and foreign producers. Transportation costs were a vital item in determining the ability of other nation's exports to compete with American goods, and Costigan wanted them included.

On November 17, 1925, the Commission sent legal briefs to the Attorney-General. Six days later the Supreme Court, in the case *Louisville and Nashville Railroad Co. v. Sloss-Sheffield Steel and Iron Company*, ruled that "When a seller enters a competitive market with a standard article he must meet offerings from other sources." If products were sold without charge for the cost of transporting them to their destination, the Court stated, freight charges were, in effect, a part of the manufacturer's cost of production. "An excessive freight
charge for delivery of the finished article affects him as
directly as does a like charge upon his raw material." 30

Costigan took it upon himself to bring this deci-
sion to the Attorney-General's attention. 31 He also sent
along another summary of his views on the question.

Glassie, infuriated with Costigan for what he termed an
effort to get a special hearing, insisted that once the
issue was submitted to the Justice Department, both
parties should await the decision without further argu-
ment. 32 The Coloradan replied that this was not a
judicial matter but rather a question of legal construc-
tion. Since the Supreme Court had given a timely sugges-
tion as to how the law should be viewed, he felt he had a
responsibility to keep the Attorney-General informed of
the latest judicial pronouncements. Also, he refused to
be lectured on ethics by a member of the bar who had
served as judge in a case in which he had a direct
interest. 33

30 Ibid.

31 Costigan to Attorney-General John G. Sargent, December 26, 1925, Costigan Papers.

32 Costigan Memorandum, December 30, 1925, ibid.

33 Ibid. Costigan referred to Glassie's stand in the sugar investigation.
Costigan's relations with the other Commissioners were clearly strained. Further, his contention that the matter before the Attorney-General was not judicial seemed peculiar indeed in light of the powers he claimed for the agency.

The Justice Department's opinion on the transportation issue was equivocal. It clearly upheld executive authority over the Commission, and stated that the President should take into account the facts of each case, including the cost of transportation, when it was "an advantage or disadvantage in competition between foreign and American producers," but he was to do this only "so far as he finds it practicable."  

Alfred Dennis and Costigan interpreted the decision as a victory for the Coloradan's position. Both were mistaken. If the President found it impracticable to use transportation data it could be ignored, and according to the Attorney-General's view, the Executive decided what was "practicable." This settled one major dispute within the agency.


35 Costigan Memorandum, February 6, 1926, Costigan Papers.
Another controversy revolving around Section 315 was the practice of investigating foreign producer's books and procedures. This was a repugnant policy to foreign businessmen. The Treasury Department had already incurred criticism by abusing similar privileges, and post-war nationalism reinforced this hostility. More than one manufacturer pointed out that his own government did not have access to his records, and refused to cooperate with the Commission's agents. 36

These field studies were a serious problem. The agency's success in obtaining some data was a tribute to its representative's persuasiveness. It also reflected foreign producer's fears that American tariff rates might rise even higher if they did not demonstrate substantial costs. All in all it was an unhappy business, and a movement arose within the Commission to abandon field investigations.

The alternative was to use foreign invoices to estimate production costs. Alfred Dennis, addressing the National Association of Manufacturers at St. Louis in October, 1925, pointed out that it sometimes took from two

36 Glassie Report, January 26, 1927; Frederich Achenbach to Tariff Commission, December 5, 1925, ibid.
to three years to collect data abroad. What concerned domestic producers, he asserted, was the actual competitive condition they held vis-a-vis foreign products in the American market, and he urged that invoices be used to establish those conditions. Such a move would reduce investigative costs and shorten the period of study before the Commission could submit its recommendation. 37

The agency did not formally consider Dennis' proposal until the middle of November. 38 Costigan immediately expressed opposition. Invoices did not represent normal prices, he argued, nor did they always reflect foreign costs. Furthermore, the law assigned to the agency the duty of comparing production costs, a responsibility which required field investigations. Marvin, without explaining his position, also voted against the use of invoices at this time. 39

The Commission took the matter up again the following July. Growing foreign opposition to its work caused Marvin to suggest that if the State Department desired,

37 October 27, 1925, copy in ibid.
38 Costigan Memorandum, November 19, 1925, ibid.
39 Ibid.
the agency could change to the invoice method of appraisal. Costigan, again argued at length against the proposal, and finally decided to make a trip to Europe to investigate the situation for himself. He left in the fall of 1926, visiting parts of France, Germany, and England.

His findings were perplexing. Evidence of foreign hostility was readily available. American companies were accused of extracting trade secrets through official investigations and of using the stolen knowledge to close foreign competitors out of markets in the United States. Costigan believed that unless the Tariff Commission improved its European image, retaliation would eventually block the exchange of information on production costs.

This conclusion posed a dilemma for Costigan. One way to improve the United States' reputation was to suspend the Tariff Commission's foreign investigations. Yet this would force the agency to turn to invoices as a source of information, and Costigan opposed this procedure.

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40 Costigan Memorandum, July 23, 1926, *ibid.*
There was no satisfactory solution to this problem. Within a few months, the agency decided to adopt the new method of gathering data.

In February, 1927, the Commission sent to the President a report based on foreign invoice data dealing with the pig-iron industry. Costigan filed a dissenting statement pointing out that a majority of the Commissioners chose India as the principle competing country, though for the entire previous year Germany had held that distinction, exporting 137,475 tons to the United States. In 1926, India had sent only 81,229 tons to America. Furthermore, Costigan stated, the cost data used by the majority had been compiled in 1924. Since then many domestic steel producers had rebuilt their plants into modern, efficient systems. The Coloradan also argued that invoices were not reliable guides to foreign costs, information which could only be gathered through a formal inquiry. His protests were futile, for Coolidge raised the duty the full amount allowed by law.

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44 Ibid., 28-30.
45 Ibid., 38. From 75 cents to $1.12 per ton.
Five months later, when the Commission completed an investigation, based on invoice data, of the Japanese rag-rug industry, Costigan again expressed disapproval. The majority defended this practice on the ground that a report was urgently needed, and industrial conditions in Japan precluded an accurate investigation of production costs.\(^46\) Costigan pointed out that since the agency had spent two years compiling a report using invoices, time did not appear to be too pressing. He also stated that a few Japanese factories, fearing increases in duties, had offered the Commission's investigators access to their books.\(^47\) Costigan insisted that there was no substitute for field studies, particularly when they were feasible.

Again, the Coloradan forced his colleagues to seek a ruling from the Attorney-General. That officer ruled that the President was required to take wages, costs of materials and other items of production into consideration, "so far as he finds it practicable," and unless he made such a finding, the Commission was required to

\(^{46}\) Costigan dissent, July 11, 1927, copy in Costigan Papers.

\(^{47}\) Ibid.
investigate these factors. But he went on to say that the Executive had complete discretion to decide whether a field investigation was practicable. Costigan had lost another battle. The Attorney-General's opinion gave the President unlimited control of the Commission's investigative techniques. While foreign hostility over field investigations might still be averted, it would be at the expense of what Costigan considered the clear meaning of the law.

The Commission's duties also confused foreign nations. For example, Spain and France viewed the agency as a tool of the President, capable of turning out whatever decision he wanted.

In 1923, the United States entered into commercial negotiations with Spain. In return for reciprocity and most-favored-nation treatment Spain suggested that the Tariff Commission reduce duties on a number of items. The implication was clear that the Coolidge administration could manipulate the agency's findings. While it was true

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49 Ibid., 326.
50 Secretary of State Charles Evans Hughes to Coolidge, November 23, 1923, Costigan Papers.
that the President could make whatever proclamation he
desired once a study was completed, he could not dictate
the Commission's conclusions. Coolidge, uninterested in
the Spanish plan, refused to initiate the studies.

A similar situation arose in connection with Franco-
American commercial negotiations in 1926 and 1927. Again
the government made it clear that it could not, or would
not, guarantee the results of a Commission inquiry, and
the problem did not arise again. 51 At no time did it
create controversy within the agency.

There were other issues which caused discussion,
however, and Costigan often found himself in the minority.
Most of his protests were futile. He failed in attempts
to expedite important studies. 52 When he admonished his
colleagues for using data from non-competitive nations,
they ignored him. 53 His pointed remarks on the gathering
of insufficient and erroneous data and other questionable
practices served only to provoke personal antagonisms.

51 Jones, Tariff Retaliation, 161.

52 U.S., Tariff Commission, Proceedings, December
2, 1927.

53 U.S., Tariff Commission, Butter Report (Washing-
Differences of opinion were an acceptable form of friction within the agency, even though they often weakened its image as a non-partisan body. However, the intensely personal hostility which began to emerge after Coolidge became president quickly weakened the agency's usefulness.

Some of the disputes were ridiculous. When the Commission's Parisian representative, Gilbert Hirsch, resigned in 1924, Culbertson accused Glassie of trying to cover up the causes for his departure. Glassie called Culbertson a liar. The latter promptly picked up Costigan's tobacco pouch and hurled it into Glassie's face. A brawl was narrowly avoided. 54

Costigan frequently objected to Marvin's practice of writing letters offering the Commission's opinion on matters for which Costigan had not expressed a judgment. Marvin's use of the agency as a political haven for needy Republicans also repelled the Coloradan. 55 The Chairman, on the other hand, charged his antagonist with exposing

54 Costigan Memorandum, November 25, 1924, Costigan Papers.

the board's problems, thereby damaging its prestige. By March, 1926, their relationship was so strained that when Marvin termed one of Costigan's requests for information "impertinent," the latter left the meeting. After waiting "more than a full day," he finally received a personal apology from Marvin, but stubbornly insisted upon another one before the entire Commission. This Marvin refused to do.

Alfred Dennis engaged in similar pettiness, threatening on one occasion to boycott meetings unless he was given additional speaking time. By his reckoning, he shared one-tenth of the meeting time with one other Commissioner, and he felt this allotment was insufficient. When Henry Glassie left the Commission, and Brossard attempted to move into Glassie's old office, Dennis became furious because he had planned to claim it for himself.

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56 Costigan Memorandum, April 17, 1923, Costigan Papers.
58 Costigan Memorandum, March 20, 1926, Costigan Papers.
59 Costigan Memorandum, November 20, 1925, ibid.
60 Costigan Memorandum, March 7, 1927, ibid.
Factionalism even spread to the staff. On March 25, 1925, Charles W. Mixter, an economist, confided to Costigan that until the previous October (1924), he had served as an "attorney" for the Coloradan's position while George P. Comer and Charles E. McNabb had defended Marvin. The Commission's data was clearly far from being impartial or scientific.

Dedicated to the belief that the flexible tariff could make a real contribution to the nation's economic health and the consumer's interests, Costigan had to make his dissent public. In time he forced an investigation of the Commission, for he recognized that without corrective legislation, the agency could never escape from Presidential influence and that of his appointees. Rather than resign, letting Coolidge have his way, Costigan preferred to take his case to Congress and to the people.

61Costigan Memorandum, March 25, 1925, ibid.
CHAPTER VI

THE FIGHT WITHOUT

Costigan's decision to publicize the controversy within the agency was the logical result of his Progressive experience. He believed that public officials should respond to the demands of general interests rather than to those of special influences. In Colorado, corrupt agreements between businessmen and politicians had motivated his reforming career; similar experiences on the Tariff Commission provoked the same response.

The tariff prompted loud pleadings from self-seeking groups; it also offered Costigan an opportunity to help the consumer. He hoped to use the agency as a tariff-revising body and to publicize unnecessarily high rates. For this reason, he supported publication of the Commission's reports, intensive surveys of important consumer items such as sugar and wheat, and strict adherence to the principles stated in Section 315 of the Fordney-McCumber Act.

Progressives had never advocated completely free
trade. Even Wilson, who had predicated his import legis-
lation upon the need to restore competition between Ameri-
can and foreign producers, wanted to insure United States' 
manufacturers a fair profit, and this demanded a moderate 
level of protection. Costigan was not outside this cur-
rent of economic thought. As a reformer he was concerned 
with reducing needless rates which raised the level of 
prices.

When Costigan's attempt to use the Commission as a 
sounding board failed, he naturally turned to the people's 
representatives, and even to the public itself, to get the 
support he needed. His plea was basic to Progressivism. 
Let the people see what lay in the path of good, honest 
government and they could correct the evil. Let them see 
what their real interests were and they could support the 
public leader who sought to achieve those goals.

This was confused thinking, since there was no 
reason to believe that the people were any more honest, 
moral, or discerning than their representatives, but it 
was an article of faith for many Progressives, and for

1 Arthur S. Link, "What Happened to the Progressive 
Movement in the 1920's?" American Historical Review, LXIV 
(July, 1959), 848.
Because of this dedication to democracy, the Coloradan found the strength he needed to combat shortsighted and perverted policies, and to maintain his principles of government.

Left alone as the sole "public minded" representative on the Tariff Commission, Costigan, after 1925, took on the role of a martyr. Hopelessly outnumbered on every issue, consistently overruled by the President on policy decisions, the constant target of personal criticisms from his colleagues, he refused to leave the board. Richard Hofstadter has commented that to the Progressive, "Bad people had pressure groups; the Man of Good Will had only his civic organizations." To Costigan, the Tariff Commission was a tool for public service. To Coolidge it was an instrument of politics, and the conflicts between these opposing philosophies dominated the agency's history during most of Coolidge's second administration.

Among the Tariff Commission's many activities, none


aroused more controversy than the sugar investigation of
1923 and 1924. It pointed up the Coloradan's views on the
agency's duties and made his fight for honesty and moral­
ity in government a public issue.

The Emergency Tariff Act of 1921 had imposed a duty
of two cents per pound on raw sugar, and the Fordney Act
raised that figure to 2.203 cents. By early April of the
next year, sugar prices rose from their previous level of
3.165 cents to a high of 5.85 cents per pound. This
caused Harding to ask the Commission to study the tariff's
relation to the increase.

It reported that while factors other than impost
had been responsible for the inflation, the duty on raw
sugar had been incorporated in wholesale and retail
prices. Costigan forced this statement by informing his
colleagues that he would file a dissenting report unless
they dealt with the effect of the tariff on long term
prices. He was convinced that the duty on that product
cost the consumer millions of dollars a year.

4 U.S., Tariff Commission, The Relation of the
Tariff on Sugar to the Rise in Price of February-April,
5 Costigan Memorandum, April 19, 1923, Costigan
Papers.
Sugar producers were afraid that the Commission's study might force Harding to lower the tariff. On the other hand, sugar refiners were anxious to see the product's price decline. The issue brought a quick response from Senator Reed Smoot of Utah who telegraphed the Commission that: "If they succeed in reducing tariff rate to destroy American industry God help the American consumer." As the leading defender of sugar beet producers, Smoot's concern was understandable.

But even Harding got more than he expected. When he first saw the report and its statement that the tariff on sugar was being passed along to the consumer, he told Marvin that it was a "God-damned report to submit to me, when the prices of sugar are jumping the way they are." While supporting the flexible tariff, Harding didn't want it to become "disturbing to the many industries of the country--politically." He finally accepted and authorized the study's publication because he felt it

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6 Smoot to Tariff Commission, March 27, 1923, *ibid.*

7 Marvin Memorandum on Meeting with President, April 19, 1923, *ibid.*

demonstrated the work of the agency, but he was aware of the sugar community's sensitivity to criticism.\(^9\)

The Commission, after initiating the study of sugar prices, had begun, as authorized under Section 315, an extended investigation of the entire industry. It was not a unanimous decision. Henry Glassie's recent appointment (March 1, 1923) added to the board a man who was closely identified with Louisiana sugar interests. Arguing that it would be unwise to act without the President's specific consent, he made a strong stand against the inquiry.\(^10\)

Despite this opposition the study was formally ordered on March 27, 1923.\(^11\) After several weeks no action had been taken on the investigation, and Costigan and Culbertson were becoming anxious. It was evident that Marvin and Harding were not interested in pursuing it.

On July 31, four months after the study had been initiated, the two western Commissioners forced through a resolution asking that the Advisory Board report its plans

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\(^9\)Ibid.

\(^10\)Official Record of the Sugar Case, compiled by Costigan, March 16, 1923, ibid.

for the inquiry.\textsuperscript{12} There was no immediate response and the Commission was forced to devote most of that summer to discussions of personnel employment and other studies already begun.\textsuperscript{13} Not until the middle of October, after Glassie had conferred with Coolidge, was a date set for the hearings.\textsuperscript{14}

Prior to the time the Commission began taking testimony, Costigan became concerned that Glassie might not disqualify himself from the investigation. The Coloradan anticipated the great pressure to be exerted on his colleagues to reach conclusions favorable to producers, and Glassie was in a vulnerable position.

On December 14, 1923, Costigan had been approached by two representatives of the Holly Sugar Company who asked what the chances were for a unanimous decision in the case.\textsuperscript{15} This was a subtle way of determining if Costigan, Culbertson, and Lewis had changed their minds.

\textsuperscript{12}Culbertson Memorandum, May 23, 1923, Costigan Papers.
\textsuperscript{14}\textit{Ibid.}, October 16, 1923.
\textsuperscript{15}Costigan Memorandum, December 15, 1923, Costigan Papers.
since the preliminary report had been issued the previous spring. When Costigan replied that he had no way of knowing what the study would produce, the lobbyists suggested that they might be willing to support the Children's Bureau and to withdraw from the sugar-beet fields children under twelve years of age. 16

The Children's Bureau, established in 1912, was an agency within the Department of Labor which gathered information and formulated legislation affecting minors. It was one indication of growing support for federal action to outlaw child labor. When this was accomplished, under the Keating-Owen Act in 1916, the Supreme Court struck down the law on the grounds that it was an unconstitutional exercise of the commerce power. 17 This produced another act to achieve the same end, this time through the taxing authority of the government. When this too was declared invalid, 18 supporters of the child labor acts tried to secure a constitutional amendment to accomplish their goal.

16 Ibid.
Costigan had long supported the Child Labor Amendment and the lobbyist's offer must have tempted him. Nevertheless, he firmly rejected it. He could not betray a trust, and he was equally concerned that other Commissioners avoided compromising positions.

These fears were directed particularly to Henry Glassie. His relationship with sugar interests seemed to preclude his participation, even though the agency had never formulated rules governing such cases. Costigan, convinced that the Commission functioned as a quasi-judicial body, urged the other members to guard against conflicts of interest. Pointing to the Interstate Commerce Commission's policy which prohibited its members from participating in cases in which they had a direct interest, the Coloradans asked for similar standards. On December 19, 1923, this proposal was rejected by a 3-3 vote.

Failing to carry the agency with him, Costigan drew Coolidge's attention to the problem. He threatened the

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19 Costigan Memorandum, December 15, 1923, Costigan Papers.
president with a public airing of the issue if he did not compel Glassie to disqualify himself from the inquiry. Coolidge was reluctant to act, a posture which had proved successful throughout his career. He felt the Commission was an executive instrument, exercising an advisory rather than a judicial function. In his opinion, it was proper for Burgess and Glassie to have specialized knowledge of the pottery and sugar industries, and he did nothing to resolve Costigan's dilemma.

When the hearing opened on January 15, 1924, Costigan entered a formal protest against Glassie's participation. Arguing that the agency's judicial responsibilities required its members to act objectively, he asserted that since there was no way to determine Glassie's impartiality, the Virginia lawyer should withdraw from the proceedings. Glassie replied that he was not in the sugar producing business; it was his wife who held that interest. Furthermore, he believed that the Commission

21 Costigan to Coolidge, January 9, 1924, Costigan Papers.
22 Culbertson Memorandum, January 10, 1924, ibid.
23 Costigan speech, January 15, 1924, MS in ibid.
24 Ibid.
was only a fact-finding group, possessing no power but that of recommendation, having no judicial character at all. This assertion drew support from Porter McCumber, former Senator and co-sponsor of the act creating the flexible tariff. He stated that "when you get to the essence of the subject, the one thing that you are to ascertain--the difference between the cost of production of the thing abroad and at home--it does not smack in any respect of a judicial character." Marvin finally concluded the dispute in Glassie's favor by reading a message from Coolidge stating that the President expected the Commissioners to conduct their business in accordance with the provisions of the law and to proceed harmoniously. Coolidge counseled Glassie to do his duty as the Virginian saw fit, and offered Executive support for any decision the Commissioner made. Later in the day, the President appointed Marvin chairman for another year.


Comments on the affair ranged from indignation to despair. The *Baltimore Sun* pointed out that "Glassie's stubborn insistence on his right to take part in the decision of the sugar schedule will not tend to increase public confidence in the principles and practices of a protective tariff." The *Locomotive Engineers Journal* felt that ordinary decency should have forced Glassie to remove himself. Both publications seemed to confuse the board's ability to hold hearings with the power to change rates, a responsibility it did not possess. The *Columbus Ohio Dispatch* felt that the flexible tariff had been disappointing, producing no changes worth mentioning, and that it made little difference who sat on the Commission. Again there was no distinction between the power of recommendation and the authority to alter existing duties.

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28 *Baltimore Sun*, January 17, 1924.

29 *Locomotive Engineers Journal* (April, 1924), 243, clipping in Costigan Papers.

30 *Columbus Ohio Dispatch*, January 17, 1924, clipping in *ibid*. Much newspaper comment was probably eliminated by Arkansas Senator Thaddeus Caraway's exposure of the Teapot Dome Scandal on January 16, 1924. See *The Denver Post* and the *Rocky Mountain News*, January 16-18, 1924. The *New York Times* noted only that the affair produced some sentiment in the House for an investigation of the Commission. January 17, 1924.
Coolidge had successfully asserted his theory that the Commission was simply a fact-finding agency. Whatever his apparent bias, each member was entitled to participate in any investigation and to discover the facts for himself. The President correctly denied that the board had legal power to withdraw this right from any of its members.\textsuperscript{31}

Costigan's crusade was near collapse when Congress finally acted to block Glassie's participation. It was an election year, and the scandals of Harding's administration were already being brought to light. Furthermore, the resurgence of Democrats and progressives in the previous off-year elections helped to create a more critical attitude toward the administration's policies. In April, 1924, Congress so modified an executive appropriation bill that it forbade the use of funds to pay the salary of any Commissioner who took part in proceedings in which he or any member of his family had any special, direct, or pecuniary interest, or in a matter in which he had acted as an attorney, legislative agent, or special

\textsuperscript{31}Calvin Coolidge, \textit{Autobiography} (New York: Cosmopolitan Book Corporation, 1929), 199-200.
representative.\footnote{U.S., \textit{Congressional Record}, 68th Cong., 1st Sess., 1924, LXV, Part 6, 5527. This measure was introduced by Homer Hoch, Kansas Representative, and was labeled the "Hoch Amendment."}

Even this support disappointed Coolidge's critics. Culbertson stated, upon seeing that thirty Senators had voted against the measure: "If so plain a moral issue cannot win a clean cut victory, our government is not all it should be."\footnote{Culbertson to Costigan, April 12, 1924, Costigan Papers.} Although Glassie accepted the act as disqualifying him from further participation in the sugar case, he maintained that the agency had been created with the idea that each member was entitled to participate fully in all investigations, and he denied that the board's decisions had any judicial meaning.\footnote{New York Daily News Record, April 14, 1924, clipping in \textit{ibid}.}

Costigan viewed Congress' action as a victory for his position. Defining the controversy as a crucial moral issue, he asserted that the public was entitled to a Commission which held morality and judicial impartiality as sound principles of conduct.\footnote{Address to the National League of Women Voters, Buffalo, New York, April 24, 1924, MS in \textit{ibid}.} His attachment to those
standards, having already provoked a conflict with the president, soon invited further efforts to hamper the sugar study.

Costigan, at the suggestion of Senator Smoot, met in late May, 1924, with a group of Congressmen and representatives of the sugar industry. After some preliminary comments, the sugar producers confronted the Coloradan with complaints about his attitude toward the industry. He assured them that his criticisms of Glassie were not necessarily an attack upon the entire sugar community. Since all other means of resolving the dispute had been exhausted, public exposure was the only alternative. While he stated his support for national protection, Costigan also pointed out that it was his duty to carry out the letter of the law. Privately, he believed that the conference indicated a drive was then underway by the industry to prevent issuance of a report.

The activities of some Commissioners confirmed this analysis. On May 23, the Senate asked for a report on butter, and Glassie, interested in getting on with that
study so the sugar report could be delayed, urged the
Advisory Board to have its preliminary study ready by June
2. To expedite the work on sugar, Costigan forced through
a motion requiring the Commission to meet on May 26 to
take up the data collected on that study. 39 He then
secured passage of another resolution which set aside
three days of every six solely for consideration of the
sugar inquiry. 40

If unhampered by the administration, Costigan,
Culbertson, and Lewis believed the Commission could issue
a report before the end of the summer. Their concern
about outside pressures was not unwarranted. With Glassie
eliminated, Costigan and his colleagues formed a majority
of the Commission. They were certain to be less sympa-
thetic to sugar growers than Burgess and Marvin. Recogn-
izing this threat the high protectionists in Congress
tried to neutralize or reverse this imbalance. 41

It was possible to revive the deadlock by bringing
about dismissal of one of the two men who were especially

39 U.S., Tariff Commission, Proceedings, May 23,
1924.

40 Ibid., May 26, 1924.

41 White, A Puritan in Babylon, 280.
vulnerable. Culbertson, by taking a job as a salaried lecturer at Georgetown University, had violated the Revenue Act of 1916 which prohibited Commissioners from holding outside employment. If he resisted too strongly, Lewis was an alternative. His appointment expired in September, 1924, and Coolidge could easily replace him with a high protectionist, avoiding the embarrassment of a report contrary to his own views.

A more effective solution was a delay of the sugar report until Culbertson and Lewis had left the agency. In any case, Coolidge wanted to continue the study until after the November election.

In late May, on the day that Costigan met with the sugar lobbyists, Culbertson was invited to face the same group. The industry's representatives subtly suggested that he modify his position in the sugar case. This Culbertson refused to consider. Then, in July, he was suddenly informed that charges had been filed against him

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because of his academic employment. The accusation, made by an unsuccessful petitioner who wanted an investigation into bentwood chairs, demanded Culbertson's dismissal.

On July 25, he answered Coolidge's summons to the White House. The President told him to discontinue the lectures, and though not mentioning Culbertson's possible dismissal, he did suggest that it would be appreciated if the sugar report were delayed at least a month. The Kansan made no commitment on the matter.

Coolidge did not make an issue of Culbertson's outside employment because legal advice had made it clear that there was no case for his removal. Attorney-General Harlan Fiske Stone told the President that the general executive powers were sufficient to dismiss any Commissioner. Whether Culbertson should be removed for malfeasance in office was a moot question.

This disrupted Coolidge's plans. He had hoped to point to a portion of law which insisted upon removal. Since he had a choice, Culbertson's dismissal could provoke political controversy, for without definite legal

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43 Ibid., 551.
44 Ibid., 547-552.
45 Ibid.
46 Ibid.
justification there was a danger of Congressional reaction.

Even before confronting Culbertson, Coolidge had made one other effort to delay the report. On July 9, he asked the agency to suspend all other work, if necessary, in order to move ahead with the butter investigation. Throughout the rest of the month Costigan carried on a continuous battle with Marvin over the meaning of the request, and charged both the President and the Chairman with conspiring to delay the sugar study. This attack forced the Commission to deal directly with the report and it became clear that it would be sent to Coolidge well before the election.

Once completed, the sugar study would place the President in a difficult spot. If he acted on it, he might alienate supporters in the sugar producing areas in the Rocky Mountain West and Louisiana. To ignore it or to act against the recommendations of the majority would offend Progressive elements in his own party and supply the Democrats with political ammunition for the fall campaign.

Coolidge wanted the sugar duty maintained for the

moment. "If a man is drowning he needs immediate help," he told Culbertson, "but if he merely needs a bath he can wait until Saturday night." The sugar industry was in no danger of perishing and the consumer could wait a little longer for tariff relief.

At the end of July the report was sent to the President. The Commission's opinion was divided. Costigan, Culbertson, and Lewis supported a reduction from 2.202 to 1.54 cents per pound, while Marvin and Burgess believed the tariff should remain the same.

The chief difference between the two groups was Marvin's and Burgess' commitment to protect all domestic sugar producers, marginal as well as efficient, cane as well as beet. Costigan's group was less concerned with the beet producers than they were with the costs of protection to the consumer.

report. The National Grange, the American Protective Tariff League, and scores of other interested parties sent letters and telegrams to the White House protesting the majority recommendations. They apparently had an effect. When questioned in early August if he was going to take the report with him to Vermont, Coolidge replied, "I don't know whether I will... or not." He declared its 256 pages a "voluminous document" and mentioned that he would take it with him mentally.

On September 27, 1924, the President issued a statement noting the severe differences of opinion within the Commission. He stated that the conflict forced him to determine what a complex set of figures meant, a duty he felt unprepared to handle. He asked the Commission for more information.

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53 Coolidge to Tariff Commission, September 27, 1924, Costigan Papers.
That ended Costigan's hopes that Coolidge would respect the agency's integrity. Although he had obtained a majority in sympathy with his position, only the President held the power to implement the Commission's findings, and he had forestalled the issue by asking for more information. Coolidge knew that the report, along with another on linseed-oil, offended important groups of voters in the West and Northwest. Any Presidential action on these studies was political folly. By procrastinating, he hoped to hold the support of voters who approved and opposed the reports, since each could hope for a favorable decision after the election. Coolidge did not act until June, seven months after the election. Then he refused to change the duty and indicated he would not do so unless sugar prices continued to rise.

By mid-1925, the composition of the Commission had changed. Lewis had resigned under pressure, and Culbertson had accepted an appointment as Ambassador to Roumania. Costigan was alone. The majority of the agency were high

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54 *Nation*, CXX (May 27, 1925), 592.
55 Ibid.
56 Coolidge statement to press, June 15, 1925, Costigan Papers.
protectionists. Costigan's views had been repudiated, yet he remained another three years, fighting a losing battle to maintain the Commission's integrity.

After 1925, Costigan's public addresses contributed to Congress' disenchantment with the agency. In a speech delivered before the Grace Community Forum on October 4, 1925, he urged that the Commission promote the national welfare rather than local interests and asked for legislative changes which would force it to report directly to Congress, avoiding executive manipulation.  

Coolidge, Marvin, and Glassie shared Costigan's concern for the general interest, but they believed that the consumer benefited from high protection for manufacturers and other enterprises. To Costigan, tariff reductions which led to lower retail prices were more helpful to the public, particularly when existing duties often protected inefficient, marginal industries.

Costigan viewed Coolidge's appointment of high protectionists to the Tariff Commission as an extension of his efforts to undermine the Federal Trade Commission and the Interstate Commerce Commission. Seeing this as a

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57 October 4, 1925, MS in ibid.
threat to progressive goals he offered drastic solutions. On December 8, 1925, he suggested to Taussig that biased members were the cause of the Commission's ills. Unless Coolidge's influence was removed it might be well for Congress to cut off appropriations until the agency was reorganized under a new administration. Later in the month, at the annual meeting of the American Economic Association, Costigan dealt the Commission a heavy blow. Replying to Taussig's assertion before the gathering that the flexible tariff provision was responsible for the controversy and inefficiency affecting the board, Costigan stated that this was an unduly pessimistic interpretation. Its logical conclusion, he felt, was the belief that the courts of the nation were incapable of rendering unbiased judgments, a possibility that was more likely than he wanted to admit. In any case, the judiciary was immune from short term pressure whereas the agency, often viewed as the actual power in adjusting tariff rates, was not protected at all. Members had to follow the administration's lead or face eventual removal.

58 Costigan to Taussig, December 8, 1925, ibid.
Affirming his faith in the possibility of securing just men to work on the Commission, Costigan declared that it had ceased to represent non-partisan independence. After calling for a Congressional investigation to pave the way for corrective legislation, he suggested that the Commission's appropriations be suspended until its members were cleansed from the influence of special interests.

Although the Commission had been created to take the tariff out of politics, Costigan felt it had become the "storm center around which far-reaching controversies may soon be precipitated." He opposed returning to old-fashioned tariff making methods since that would "repudiate the combined judgment . . . of American Statesmen . . . and our leading business men." It also meant an end to any hope of a scientific tariff.

The Colorado reformer denied that Coolidge had a right, perhaps a duty, to place men of his persuasion on the Commission, and to direct its activities. Costigan's claims that the agency was a judicial body were fanciful

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60 Ibid., 1389-1290.
61 Costigan Memorandum, January 31, 1926, Costigan Papers.
62 Ibid.
indeed, though he was to convince many people that he was right. Initially, Costigan had been encouraged. He had gained some support in Congress and other critics of the agency lent strength to his effort. The result was a Senate investigation which put his faith in the people and their representatives to the test.

Costigan's faith in the people reflected his progressive mentality. Always before when honest government had been threatened by corrupt alliances between public officials and special interests, he had taken his case to the voters. In Colorado, from 1902 to 1914, he had frequently pursued this device to establish the justice of his cause. He had repeatedly lost. Only in 1916, in backing Wilson, and in 1924, in attacking classical, had he achieved his political goals. In creating Congressional interest in the Commission's problems, he faced the possibility that Congress might disagree with his solution and abolish the agency.

Costigan had hoped that the Tariff Commission could provide the American consumer, laborer, and manufacturer with the greatest possible benefits consistent with a reasonable protective system. When Republican majorities blocked these objectives, he turned to the public for support.

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CHAPTER VII

THE TEST

Costigan's faith in the people reflected his progressive mentality. Always before when honest government had been threatened by corrupt alliances between public officials and special interests, he had taken his case to the voters. In Colorado, from 1902 to 1914, he had frequently pursued this device to establish the justice of his cause. He had repeatedly lost. Only in 1916, in backing Wilson, and in 1924, in attacking Glassie, had he achieved his political goals. In creating Congressional interest in the Commission's problems, he faced the possibility that Congress might disagree with his solution and abolish the agency.

Costigan had hoped that the Tariff Commission could provide the American consumer, laborer, and manufacturer with the greatest possible benefits consistent with a reasonable protective system. When Republican majorities blocked these objectives, he turned to the public for support. He urged Congress to lock into the board's revision. He also stated that the public had not been adequately informed of the Commission's reports and findings. Consequently, it was unable to express support for tariff revision.

The meeting of the American Economic Association on December 29, 1925, marked the beginning of Costigan's
final effort to turn the Tariff Commission into an instrument for reform. Conditions within the agency had deteriorated to the point where he had no choice but to make a public appeal to professional economists and ultimately, to Congress, the only group who could resolve his difficulties.

Costigan had frequently spoken publicly of the board's problems, but never in a comprehensive manner. On that evening in New York, he delineated the agency's handicaps, charging the Republican administration with undermining its true function. First, he asserted that the board had ceased to function as a non-partisan group. The pressures exerted on Culbertson and Costigan on behalf of the sugar interests illustrated the outside influences which hampered the board, and he charged that Marvin and Coolidge had used their positions to safeguard a high tariff.

He also stated that the public had not been adequately informed of the Commission's reports and findings. Consequently, it was unable to express support for tariff revision. He urged Congress to look into the board's difficulties, sure that an investigation would confirm his charges and force dismissal of the agency's high
Finally, Costigan asked the Senate to refuse to confirm the nominations of E.B. Brossard and A.H. Baldwin, and to cease appropriating funds for the Commission until steps were taken to insure that it would confirm to the standards of disinterested, public service which he proposed for it. This was a serious indictment, indicating the depth of Costigan's convictions as well as his desperate position within the board, but it was not the only public criticism of the Commission.

Frank Taussig, also discussed the agency's problems before the Economic Association that December night, but he differed from Costigan, in that the former Chairman of the board felt its difficulties were derived from its administration of the flexible tariff. Taussig had come to this conclusion soon after the new provision was inaugurated, suggesting that it would prove to be especially controversial because some of the Commissioners appointed by Wilson opposed Harding's and Coolidge's

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2Ibid.
Furthermore, he reasoned, no Commission could remain immune to the pressures special interests exerted in order to obtain a high level of protection. The Commission's frequent examination of important economic commodities provoked business uncertainty, and this produced strong pressures against the use of the flexible tariff. Taussig thought it would be far better for tariff rates to be established and left alone, allowing businesses to adjust to them. This would take the agency out of politics, away from Presidential direction, placing it where it belonged, under the control of Congress. Unless this were done, Taussig was convinced the board would be dissolved.

Another former Commissioner had a similar view. Thomas Walker Page believed that Section 315 gave the agency impossible responsibilities. It was for this

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5 Journal of Commerce (December 31, 1925), 6, Costigan Papers.

reason that he had resigned in 1922. Like Taussig, Page was convinced that the costs of production could never be established accurately enough to allow the Commission to recommend rate changes, and he lamented the political involvement the flexible provision forced upon the board.

Other progressives continued the attack on the Commission. In 1924, during debate on the agency's appropriation, Kansas Representative Homer Hoch had pointed out that the Commission's effectiveness depended on public confidence. There were signs that this faith was weakening, and Costigan's campaign against Coolidge's policy contributed further to the board's poor image.

During the 1924 Presidential campaign, George Norris had charged that Coolidge had tried to force through a sugar report favoring the producers. The issue, while failing to arouse popular interest, did not die. In the following spring Senators Borah, Norris, King, and Burton K. Wheeler asked for the agency's dissolution,

7 U.S., Senate, Tariff Commission Investigation, 50, 57; Thomas Walker Page Memorandum, July 20, 1927, Costigan Papers.

8 Ibid.

along with that of the Federal Trade Commission, because both had "fallen into the hands of reactionaries and no longer serve the purposes for which they were created." 10

The Nation, unhappy with the board's work, reasoned that it could not create a scientific tariff unless it avoided partisan politics. 11 Like other critics, it failed to understand that the agency, in order to function properly under the Fordney-McCumber Tariff had to be staffed by Republicans, devoted adherents of the President. Business sentiment in favor of modifying the Commission's duties was expressed in the summer of 1925 by the United States Chamber of Commerce's proposal to reorganize the flexible tariff, allowing the President to make reciprocal trade agreements. 12 Businessmen were seeking, somehow, to get the tariff issue into calmer waters.

Agitation arose again in the fall when Senator Norris resumed his attack against the "packing of the U.S.

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10 "Tariff Commission Scandal," Nation, CXIX (August 13, 1924), 156.
11 Baltimore American, May 25, 1925, clipping in Costigan Papers.
12 Journal of Commerce (June 22, 1925), clipping in ibid.
Tariff Commission," demanding that it be disbanded. This promoted other requests that Congress do something about the agency.

In December, 1925, Representative Cordell Hull of Tennessee, outlining a "little economic program which ... will appeal to many legitimate people," attacked Coolidge, the Commission, and the tariff. He condemned the administration's high tariff policies because they did not recognize the new economic framework produced by World War I; American trade could not expand unless other countries were able to sell goods in the United States. He demanded immediate reductions to moderate levels. Hull also suggested that the Commission's appropriations be suspended until Congress removed its biased personnel and restored its integrity.

Later in the month, Costigan's address before the

13 Nation, CXX (May 27, 1925), 591.
14 National Progressive Bulletin, I (October, 1925), passim; Peoples Reconstruction League to Senate, December 12, 1925, clippings in Costigan Papers.
Economic Association echoed Hull's suggestions, and emphasized the Coloradan's difficulty in seeking implementation of the flexible tariff when he had to work with a group of prejudiced associates.  

The Nation was impressed. Repulsed by the views of William R. Wood, Chairman of the Republican National Congressional Committee, who believed that "we ought to have a commission ... that is in sympathy with the administration," it boasted that "so long as he [Costigan] remains on deck, the Tariff Commission will never be safe for plutocracy."  

Costigan's speech capped the progressive's attack against Coolidge's handling of the Tariff Commission and improved the Coloradan's public stature. But while he, Norris, La Follette, and others successfully exposed the President's mismanagement of the agency, they did not arouse popular concern over the issue. A few months

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17 Ibid., 1926, LXVII, Part 2, 1389-1390.
18 "Wanted: A Little Sympathy," Nation, CXXII (March 24, 1926), 308; Nation, CXXII (January 27, 1926), 83.
19 Ibid.
20 "Mr. Norris Indicts the President," ibid., CXXII (February 10, 1926), 131.
later, after the Senate had begun an examination of the board, the Baltimore Sun expressed the frustrations of many reformers when it commented that "things have come to a pretty pass when it is necessary to name a fact-finding commission of the Senate to investigate a fact-finding commission of the government." Many businessmen, unhappy with the controversy surrounding the flexible tariff, were convinced that Congress should dissolve the board. Other critics of the agency agreed.

Although responsible reformers had pointed out the difficulties within the Commission and influential publications had illuminated the conflict between the President and Costigan, they were unable to arouse public concern. This apathy blocked reform of the Commission.

On the eve of the presidential campaign in 1928, Rexford G. Tugwell summarized the feelings of men who had lost faith in the Tariff Commission. "It is perfectly clear, now, that... has been sabotaged." While

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22 Journal of Commerce (December 31, 1925), 6.
he pointed out technical difficulties which made it impossible for the agency to do more than guess at production costs, and emphasized the difficulties inherent in foreign investigations, he was clearly unhappy with the board's decay.

However, Tugwell realized that Coolidge's handling of the agency was consistent with the President's general economic policies. With this insight he revealed the major cause for the progressive's disillusionment. The board was the Executive's instrument, not an independent commission. They were wrong in expecting Coolidge to treat it any differently than he did.

Reformers, in seeking a scientific tariff, were bound to be disappointed, unless they could protect the agency from Presidential control and staff it with men of their own persuasion. Since the Fordney Act was not modified until 1930, and no Democrat was elected to the White House until after that date, neither move was possible and progressive disenchantment with the Commission was inevitable.

Despite Coolidge's reasonable, legal, and just

\[24\text{Ibid.}\]
handling of the board, embittered progressives and office-hunting Democrats eventually forced a Senate investigation. They hoped to prove that the President had exceeded his constitutional authority, or at least that he had done something morally wrong.

The possibility of an inquiry had been raised as early as January, 1925, when Joseph T. Robinson, the Senate minority leader, asked for an investigation of Coolidge's treatment of the Commission during the sugar study. 25

Nothing came of this proposal, probably because the Senate did not want to disturb the administration. However, 1926 was an election year and a coalition of progressives and Democrats, irritated with Coolidge's general conduct and encouraged by Costigan's revelations before the American Economic Association, made a vigorous effort to embarrass the President.

Senator George Norris pointed to Coolidge's handling of David Lewis, tied it to the sugar report, and accused the Chief Executive of enticing Culbertson from office in order to pack the agency. 26 Norris labeled the


Commission a judicial body, a characterization supported by Senators Furnifold M. Simmons of North Carolina and James A. Reed of Missouri. Simmons explained, "under the law the commission finds the facts and applies the law; the President approves or disapproves its findings."\(^{27}\)

These reformers also pointed to the repeated renewal of the Hoch Amendment as an indication of the agency's judicial nature.\(^{28}\)

Other critics pointed out that almost $5,000,000 had been spent by the board since 1917 and expressed doubt that the nation had received full value for its expenditures. They also cited resolutions by the National Board of Farm Organizations and other groups charging that the Commission was disreputably managed and hopelessly biased.\(^{29}\)

On March 2, 1926, several Congressmen once again attacked the Commission. Representative Hull repeated his proposal to abolish the agency, insisting that it had ceased to function as a non-partisan body.\(^{30}\)

\(^{27}\)Ibid., 3632.

\(^{28}\)Ibid.

\(^{29}\)Ibid., Part 4, 4194-4195.

\(^{30}\)Ibid., 4858.
treatment of the board and anxious to express their hostility, supported Senator Robinson's new motion to investigate the agency.

The Senate was determined to have a thorough investigation. This was indicated in Reed Smoot's failure to gain control of the inquiry when Senator Norris charged that "we can not investigate the action of the Tariff Commission on the sugar question without investigating the senior Senator from Utah." A majority concurred. The inquiry divided the Senate along a liberal-conservative line, being supported by 11 progressive Republicans, 28 Democrats and one Farmer-Laborite. A combination of 28 Republicans and two Democrats opposed it.

The Senate selected a special committee, headed by Robinson, to conduct the investigation. It was dominated by Democrats and progressives. William Cabell Bruce, Democrat from Maryland, and Robert La Follette Jr., Progressive from Wisconsin, along with Robinson comprised the majority. David A. Reed of Pennsylvania and James Wadsworth Jr., of New York were the Republican members. Robinson's resolution instructed the special committee to

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32 Ibid., 5387; Washington Post, March 12, 1926.
31 Ibid., Part 5, 5386.
examine the sugar controversy, dissension within the agency, methods of compiling data, and its freedom to operate independently of the President.  

The success of the resolution indicated that the Senate was no longer willing to see the Commission wallow in inactivity and charges of corruption. Also it was a blow against Coolidge's authority and an attempt to embarrass him in an election year. The Washington Post remarked that the President was in the position of having to defend himself "against charges that he used the influence of his office to affect the official action of members of a body which by law was made independent of executive influence or control." That newspaper, along with other disappointed supporters of the Commission, had distorted its functions in order to strike at the President.

Hearings opened in late March, 1926. In the next two years, with an extended recess during the fall elections, the committee heard testimony describing the problems Costigan had endured during his years in opposition.

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32 Ibid., 5387; Washington Post, March 12, 1926.
33 Ibid., 1193.
The Coloradan's difficulties with the other commissioners, his interpretation of the flexible tariff's meaning and the frustrations he experienced in trying to implement it were all delineated. Other witnesses emphasized the president's efforts to make the agency responsive to his policies.  

The hearings also revealed the efforts of Marvin, Burgess, and Glassie to select data which justified a high tariff. Their reaction to these charges was expressed by Burgess who described the whole inquiry as a politically motivated attempt to damage Coolidge and the Republicans in an election year.  

The committee's six months recess during the fall of 1926 supported this charge. The investigation could not be completed in time to issue a formal report before the elections of that year. By delaying, the President's antagonists were able to use their findings in 1928 when Coolidge, or his successor, ran for office. 

In addition to harassing Republicans and the

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34 Senate, Tariff Commission Investigation, 78, 84, 140, 241-300, 348, 403.
35 Ibid., 144-145, 941-975, 1288-1373.
36 Ibid., 1193.
president, the investigation focused on the question of whether the flexible provisions were workable, and if so, how? Costigan, an important witness, presented a lengthy history of the agency and documented what he felt was its proper function. He reiterated his hope of using the Commission to publicize information which indicated the value of lower duties to the farmers and laborers.

The drama reached a climax when Costigan charged that William S. Culbertson had deceived the committee. Recalled from Roumania to testify, Culbertson had defended Coolidge's treatment of the Commission and the general tenor of Republican tariff policies. He denied that he had ever been critical of the President's relations with the agency, or that he had been asked to delay the sugar report. Also, he demurred that he had not been forced off the board. Costigan refuted this testimony by producing a personal letter Culbertson had sent him from Bucharest, expressing a critical view of the Commission's activities

37 Ibid., 28, 50, 405, 539.
38 Ibid., 241-410.
39 Ibid., 753-755.
and lamenting Coolidge's treatment of it.\footnote{Ibid., 589-590.}

In introducing this evidence, Costigan undermined Culbertson's efforts to defend the administration, and he also damaged the Kansan's public career. When chastised by Culbertson for using personal correspondence without permission, Costigan defended his action by stating that the public interest required him to speak. Privately, he viewed Culbertson's exposure as a "great personal tragedy."\footnote{Costigan Memorandum, May 19, 1926, Costigan Papers.}

At the risk of alienating important allies both in and out of Congress, Costigan blindly pursued his fight against Coolidge and the other Commissioners in the hope of forcing the agency's reorganization. His treatment of Culbertson weakened the Coloradan's image in Congress. It struck many people as being in extremely bad taste, and particularly offended Culbertson's influential Kansas supporters. William Allen White thought it "deplorable and a discredit to all concerned,"\footnote{White to Culbertson, March 6, 1926, Culbertson Papers.} and Homer Hoch...
characterized Costigan's move as a "very gross sort of thing."  

In private correspondence with Robinson, Costigan urged that the board be renamed the Federal Tariff Commission, convinced that a prestigious name would insure the board's independence. By that time, Robinson preferred to abolish the flexible tariff, and to make the Commission a legislative research bureau. This was a blow to Costigan's efforts to forge the group into a conspicuous public agency. Congressional opinion, moreover, was clearly behind Robinson.

The report submitted to the Senate on May 29, 1928, recommended repeal of Section 315. Robinson, Bruce, and La Follette claimed that the Tariff Commission had no practical value, that the President was unable to devote proper time to its administration and that tariff-making was an exclusive Congressional duty. It adopted Robinson's view that the agency be modified into a fact-finding body. The majority suggested that if the flexible tariff were not abolished, steps be taken to protect the board.

43 Hoch to Culbertson, March 20, 1926, ibid.

44 Costigan to Robinson, January 16, 1928, Costigan Papers.
from special influences and to insure public scrutiny of its reports. 45 Senator Wadsworth had failed of re-election in 1926, but the minority report which Senator Reed delivered to the Senate reflected both their views. Reed pointed out that changes in the Commission's personnel had already put an end to the bickering which had handicapped its work, and that questions of policy, such as the use of invoices and the inclusion of transportation charges had been settled by the Attorney-General. The Pennsylvanian expressed the hope that the board would reach speedier conclusions, justifying the flexible tariff. 46

The change in personnel, to which Reed referred, had occurred on March 14, 1928. On that date, Edward Costigan finally resigned from the Commission. Convinced at first that the tariff had caught the nation's attention, he believed that major changes in the country's industrial and commercial policies could not be far off. 47

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46 Ibid., 10552.

47 Costigan Memorandum, October 25, 1927.
When he realized that he was wrong, that there was no support for his position either in Congress or the country, he lost hope of ever seeing the Commission publicize desirable tariff reform. Robinson was not interested in the Coloradan's program. When Coolidge reappointed Marvin chairman of the agency in January, 1928, it was clear to Costigan that his program was futile. As reports of the Senate Committee's recommendations leaked out it became obvious that his only course was to resign.

On March 15, Senator Robinson inserted Costigan's departing statement into the *Congressional Record*. It outlined the reforming Commissioner's long effort to preserve what he considered to be the proper functions and ideals of the agency. It was Costigan's final effort to arouse public interest in the fate of the Tariff Commission.

Public service still demanded public fidelity and he felt that one last protest was in order. "I am therefore returning my official Commission to the Government." 48 He reviewed earlier charges that the agency had failed to examine the myths which misled consumers into supporting extreme protection, and he asserted again that Harding and

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Coolidge had undermined the Commission's integrity.\textsuperscript{49} Since the summer of 1925, he stated, Coolidge had prevented the scientific application of Section 315, and pointed out that "sharply different interpretations of facts and law have featured the Commission's reports to the President."\textsuperscript{50} Costigan cautioned that "In an era which history may yet summarize as the age of Dougherty, Fall, and Sinclair, . . . the fates and fortunes of the Tariff Commission may be thought unimportant."\textsuperscript{51} No part of the public edifice could be undermined without danger to the whole structure.

For three years, Costigan had fought a hopeless struggle. Internal reform was impossible, and the Senate investigation was taking an unsatisfactory direction. In submitting his resignation he tried to again save the agency by creating a public controversy. In this way he hoped to force the Senate to preserve the flexible tariff while removing the Commission's prejudiced members.

Costigan's plea for a type of civil service immunity for the agency ignored its true responsibility as well as the realities of politics. From the progressive's viewpoint, however, his position was defensible, and letters of

\textsuperscript{49}Ibid., 4735. \textsuperscript{50}Ibid., 4736. \textsuperscript{51}Ibid.
support flowed in from many sympathizers, among them, Gifford Pinchot and Herbert Feis. As one writer has stated, Costigan was honest and conscientious, and he set for himself high standards of public service. His parting with the President should have been a matter of national concern.

The failure of Costigan's resignation to create a controversy was an indication of the apathy of the decade and the esteem with which Coolidge was viewed. Issues concerning morality and dedicated public service did not arouse the public.

Brossard commented that Costigan reminded him of the soldier who complained to his captain, "They're all out of step but me." Perhaps the Literary Digest described the situation best when it reported that "Commissioner Costigan tells his colleagues on the Tariff Board that he can't stand their company any longer, and they reply that in resigning, Mr. Costigan is leaving a job he was never

52 Pinchot to Costigan, April 4, 1928; Feis to Costigan, March 20, 1928, Costigan Papers.
54 Baltimore Sun, March 16, 1928.
fitted for anyway." The Nation was convinced that his resignation confirmed the hopelessness of scientific tariff making. Disillusionment was complete.

William Raine, writing about Costigan in 1930, commented that the Coloradan had always displayed a practical attitude toward politics, despite his willingness to "break a lance for a worthy forlorn hope." This was not true of Costigan's service on the Commission. He probably should have resigned in the spring of 1925 when Culbertson was appointed to a diplomatic post, for his cause was virtually hopeless. Instead, he remained to interfere with Coolidge's right to run his own administration. In the next three years he was a constant problem. Hoover made certain that the agency was filled with his own appointees.

By that time the flexible tariff was an anathema to progressives and Democrats. Hoover had to insist that

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55 "Costigan's Brickbat," Literary Digest, XCVI (March 31, 1928), 11.
56 "President Coolidge Misfeasance," Nation, CXXVI (March 28, 1928), 326.
Without it he would veto the Hawley-Smoot Tariff. When Section 336, the flexible tariff in the new act, was finally passed, it provided that the President could replace all the Commission's personnel. Since the entire agency was now attuned to the Executive, the flexible provision was no longer a source of discord.

Extensive investigations which had preceded proclamations under Section 315 gave way to general surveys, demanding less exhaustive data, which were completed more quickly. Under Hoover, the agency produced 60 reports dealing with over 100 commodities. Over two-thirds of these studies were sent to the President and he increased the rates on 13 commodities, and decreased them on 19 items.

Costigan had been right. The Commission's personnel had hampered its deliberations. However, he refused to


60 U.S., Statutes at Large, XLVI, Part 1, 701.

recognize that he was the personnel problem. The agency's job was to carry out the President's orders and policies. When its members agreed with the administration, it functioned well. When Coolidge had to contend with Costigan, harmony had been lost and the board's usefulness impaired.

Section 336 of the Hawley-Smoot Tariff provided fewer opportunities for political complications. The Commission was directed to use transportation and invoice data to estimate production costs, and specific penalties were provided for persons who tried to influence a Commissioner's work. 62 The President accepted or rejected the board's reports; he could not change them. 63 Since the Commission had to be consulted if the Executive wanted to act, it was essential that it reflect the President's policies.

Businessmen were happy with the reorganized Commission, describing it as one more sensible and practicable than before. 64 Since it could act more quickly, it was also more responsible to their needs.

63 Ibid., 701.
64 "Flexible Clauses in Tariff May Really Mean More Now," Business Week (July 16, 1930), 27, clipping in Costigan Papers.
Costigan was disappointed with the new law, labeling it a device to create a partisan, administration-directed agency. While correct, his analysis overlooked the fact that the Commission had always been an Executive body.

Edward Costigan’s career on the Tariff Commission
Coolidge and Harding treated it no differently than Wilson illustrated the weaknesses of one reform program in the would have had he been in office during the decade.

Costigan’s ordeal had ended. When he returned to Washington in 1931, as a United States Senator, he was in a position which sanctioned publicity, and he faced a far more receptive audience. In the days of the New Deal concepts of national economic regulation, support for deprived reformers were disillusioned with the idea of scientific societal groups, and legislation to benefit the consumer were more in tune with the political and social environment. Previously, these notions, along with the Tariff Commission, had received only passing attention, for as Costigan stated, there was no room for a Teapot Dome and a Tariff Commission scandal too. His tools, the reservoir of public morality and the curing hand of democracy had failed him. He returned to Denver virtually unnoticed, his career an index of the weakness of public sentiment for reform in the Republican years.

65 Costigan to La Follette Jr., May 13, 1929, Costigan Papers.
CHAPTER VIII

COSTIGAN, THE COMMISSION, AND THE NEW DEAL

Edward Costigan's career on the Tariff Commission illustrated the weaknesses of one reform program in the decade of the twenties. Progressives supported the agency when it was created in 1916, because they felt it would take the tariff out of politics. Others supported it in the belief that it might be a useful device to raise protection. However, by the middle of the next decade, reformers were disillusioned with the idea of scientific tariff revision. Consequently, they gave only sporadic support to Costigan's effort to preserve the Commission's non-partisan image.

The board was originally designed to accumulate information dealing with the tariff and post-war trade. It was certainly one exception to the assertion of Thomas C. Cochran and William Miller, that most Progressive legislation was connected with the hope for Allied victory or national preparedness for war. The Commission would have been equally useful had Germany defeated Britain, and

been equally useful had Germany defeated Britain, and
Progressives intended for it to function as a collector of
data which could be used to strengthen, and in some cases,
to reduce duties.

Until 1922, Costigan had little reason to be unhappy
with the Commission or its relationship with the President.
But after the flexible provision was adopted, he saw the
possibility of using the board to modify the tariff. He
committed himself to that goal. When Coolidge opposed
revision, Costigan attacked the Chief Executive's authority,
but it was a futile task. Public support was absent and
Congressional interest waned at crucial moments. The
result was a series of intra-commission conflicts and
public denunciations of the President which undermined the
board's image and its capacity for producing objective
reports.

Costigan, one of the Commission's original
appointees, brought to his position extensive experience in
reform politics. For this reason, he was aware of the
threats special interests posed to good government, and he
was determined to preserve the agency's non-partisan image.

Joseph Huthmacher has drawn attention to the importance of
the urban working classes in the Progressive movement.
Because this group experienced hard times, it supported innovative legislation in the hope of improving conditions for wage earners. Huthmacher contends that the success of the reform leader came from the voting support these classes gave him. Yet Costigan's career demonstrated that the Progressive leader was not without experience of his own, and that exposure to the "school of hard knocks" helped make him more responsive to the harsh environment of the city. More often than not, the reform leader was quite willing to use the government's power to force legislation benefiting the middle, laboring, and lower classes.

Costigan grew up, politically, in an urban environment. He saw the despair which sapped the city's anonymous poor, the corruption between government and business, and the need to organize laborers in mines and industries. His political career was inspired by confrontations with urban politics and municipal problems which offended his inherent sense of morality and fair play, and which stimulated his desire to govern.

George Mowry's assertion that Populism was the

seedbed of Progressivism does not explain Costigan's career, for it was inspired by an urban rather than a rural environment. Yet Mowry's suggestion that Progressive political leaders were motivated by an eclipse in their community status has some validity when applied to Costigan's early life. One student has carefully refined this idea by showing that Costigan was not reacting against a loss of status, he was merely trying to improve his position in Denver's public hierarchy.

Samuel P. Hays has offered a different challenge to the Mowry concept of a status revolt and Richard Hofstadter's elaboration of the same thesis. Hays asserts that opposition to the Progressive politicians came from persons in the same social and economic classes as the

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5 DeLorme, "Costigan," 69, 237, 238.

reformers. Hence, any analysis of public minded citizens based on their social background or occupation is meaningless. Hays believes that proclaimed political ideology is not a key to the political motivations of reformers, for research has shown that it was the upper classes, that is corporation leaders and the professional and business elite, who led the Progressive movement for municipal reform. Their motivations had no relation to their status; it was rather the logical result of their desire to exercise their superior capacities for government. To accomplish their aim, the destruction of the ward-system of voting, they had to overcome the opposition of both the middle and lower classes to a change in government. They did this by enunciating the rhetoric of democracy, but their real goal was power. Once centralized, municipal government was subject to control in the interests of those who held economic power, the upper classes. Thus, municipal Progressive reform was a conservative movement. Costigan's career in Denver offered some support for this thesis. He was certainly not hostile to the ambitions

8 Ibid., 157-159.
9 Ibid., 161-163.
and programs of the middle and lower classes, nor was his economic position in the community so great that it forced him to seek political power. But his belief that government could successfully intervene into the social and economic problems of the day clearly coincides with his drive to get into politics. In a sense, he was seeking, as Hays suggests many reformers were, to bring his capacity for government to bear on the political system. Yet, this is hardly a new revelation. Hofstadter has pointed out that it was this same drive which caused some lawyers, teachers, preachers, and editors of the country to support reform. They felt they could govern better than the politicos. Whether they were suffering from a loss of status was irrelevant. More important was their willingness to contest the entrenched ruling element for control of government. Furthermore, the reformers made no effort to conceal their ideological commitment to the improvement of men through the re-allocation of national wealth, and the control of large, abusive corporations. Many of them even supported the organization of labor. If they were not sincere in their ideological beliefs, they

nevertheless aroused real desires to alleviate the problems of American society, both on the municipal and national levels.

Costigan's public career illustrated this. He was clearly in the same tradition as Theodore Roosevelt and George Perkins, who accepted the new industrial order and America's growing international responsibilities. The rural traditions which were so appealing to William Jennings Bryan and Robert La Follette appeared unrealistic to Costigan. While the Coloradan's sympathy for the labor movement exceeded that of many Progressives, he was clearly within the tradition of the New Nationalism. 11

Hays' thesis suggests that the Progressive's plans for greater democracy were but a sham, designed to allow them to acquire power. 12 Regardless of the validity of this charge, it is true that Progressivism propounded the belief that more democracy would help solve society's


problems. Yet, believing that men in politics had weaknesses which were easily exploited by special interests, reformers often turned to the independent commission as a device to protect the people's interests.

The individual's position as a consumer was important. The tariff touched directly upon this role, for domestic manufacturers, often capable of underselling foreign competitors, moved their prices up to the full amount of the duty and thus raised retail costs.

It was this special benefit for the manufacturer that Costigan combated while he was on the Tariff Commission. His struggle and eventual failure pointed up what one author has termed "The great error of the Progressives," the belief that it was possible to avoid corruption by taking regulation of economic affairs out of politics. 13

The New Nationalists often viewed independent commissions as agencies performing roles which gave stability and continuity to the government. 14 Thus the Federal Trade Commission, the Interstate Commerce Commission, and the Tariff


14 David Noble, The Paradox of Progressive Thought (Minneapolis: University of Minnesota Press, 1958), 75.
Commission were viewed as sterilized instruments (free from political pressure) which could successfully operate on the economic system. Yet when they were confronted with political and public inertia, undermining their administrative procedures, Progressives became indifferent and disillusioned with reform. 15

Paul Glad has suggested that the chief cause of progressive weakness in the Republican years was their inability to express principles and programs upon which they could agree. 16 He has pointed to the peculiar rhetoric of the reformer which produced such phrases as "moral crusade," "more effective democracy," and "the will of the people," as a force which united liberals when issues and programs could not. But in the decade of the twenties, Glad states, businessmen and politicians began to speak the same kind of language and this confused the progressives. In an effort to distinguish themselves, reformers tried to state their principles more specifically and offered concrete programs, but this merely contributed to their...


fragmentation. The vacuity of generalities had unified them. In the period from 1920 to 1930, specific proposals helped destroy organized reform.  

Many progressives were unable, for example, to pursue the President's treatment of the Tariff Commission beyond what proved to be a listless Senate investigation. During the decade normalcy proved to be far more important than reform, perhaps because many Americans believed that the changes of the Roosevelt and Wilson eras "had eliminated the threat of the trusts and controlled the chicanery of the speculators." But a more cogent argument holds that for various reasons reformers were simply unorganized. 

Progressives were active throughout the decade, and Edward Costigan was one of the most energetic, yet his experience proved, more so than that of most reformers, how futile it was to picture the world in black and white.  

17 Ibid., 77-85.  
20 Degler, Out of Our Past, 373.
Many of the Progressive's innovations proved inadequate to deal with the complexities of economic and political life. Certainly the Tariff Commission was a good illustration of this. During the years of Harding and Coolidge, a time of general prosperity, the agency was forced to desist from investigations which popularized tariff reform. The consumer while theoretically provided for, was actually ignored.

During the next decade, when depression overwhelmed the nation, the Commission was discarded as an effective tool, because New Dealers realized that the flexible tariff was inadequate to make the widespread changes necessary to improve America's foreign trade. Instead, broad, nearly unlimited power was given to the President to raise or lower tariffs.

Instead of popularizing tariff reductions, the Commission became a research bureau, serving the President, the Secretary of State, and Congress. Only in this sense did the progressives succeed in forging a tool to deal with economic crises.

The Hawley-Smoot Tariff, adopted in 1930, reduced the need for extensive and costly foreign investigations, and provided for the re-appointment of the entire Commission.
Thereafter all its members followed the administration's policies. Even the change in national leadership in 1933 did not alienate the board from the President. In part this was due to the board's singular fact-finding role but other developments during Franklin Roosevelt's administration hastened the Commission's insulation from politics.

The National Industrial Recovery Act was designed to organize and regulate the economy through a set of codes which were drawn up by each major industry and approved by the government. To insure that American trade policies did not undermine the effort to establish a nationally directed economy, the Act instructed the President, after obtaining advice from the Tariff Commission, to restrict or ban imports threatening any Blue Eagle industry.

This legislation impaired the usefulness of Section 336, for under the National Industrial Recovery Act, the President was no longer limited to increases or reductions equal to 50 per cent of an item's duty. The cost of production standard was set aside as a device for protecting American trade.

21 U.S. Statutes at Large, XLVIII, Part 1, 195.
22 Ibid., 196-197.
23 Ibid.
Responding to these new responsibilities, the Commission set up a special statistical service to help the National Recovery Administration and the Agricultural Adjustment Administration keep track of imports. It also began to work with the State Department, accumulating data for the reciprocal trade program Secretary of State Cordell Hull planned to inaugurate. When Congress approved the act, the agency expanded its fact-finding program and made a large contribution to reciprocity.

The Trade Agreements Act of June 12, 1934, established the policy of expanding American trade through reciprocal agreements with foreign countries. In time, three coordinating committees were established to direct the program, the Executive Committee on Commercial Policy, the Committee on Foreign Trade Agreements, and the Committee for Reciprocity Information. The Tariff Commission sent representatives to all of them, and after 1934, it devoted most of its resources to the task of furnishing data for Hull, Roosevelt, and the three committees.

The reciprocal trade act also allowed the President

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25. Ibid.
26. Ibid.
to proclaim a change in the tariff of up to 50 per cent of the established duty on an article if he felt it was necessary to improve American trade. Since he could also negotiate tariff reductions with other nations, under the same percentage limitations, it was clear that the flexible tariff was no longer considered a useful device for improving trade. To emphasize this, the act stated that the flexible provisions did not apply to items included in reciprocal agreements. 27

Costigan's dream for the Commission had been thwarted by Coolidge and sapped by Hoover. The New Deal destroyed it. On the other hand, the Coloradan had the satisfaction of seeing a new device, the reciprocal trade program, achieve the non-political tariff revision he had fought for during the previous decade.

Elected to the United States Senate in 1930, Costigan supported New Deal type legislation even before Roosevelt was inaugurated. 28 Throughout the depression


28 Goodykoontz, Papers of Edward P. Costigan, 369; William E. Leuchtenburg, F.D.R. and the New Deal, 1932-1944
In a sense, Costigan’s experiences and temperament were not compatible with the spirit of the New Deal. He was inflexible in his reform goals and he maintained rigid standards of morality, whereas the New Deal was pragmatic and opportunistic. Furthermore, the Coloradan had never dealt with economic depression. His reformist activities had always operated within a framework of prosperity. Yet he shared with the Roosevelt administration a humanitarian concern for the disadvantaged and a willingness to express that interest with a broad program of social and economic legislation.

Costigan’s career on the Tariff Commission was a frustrating one and so, in a sense, was his entire public life. He never achieved the recognition and public fame which his position in government seemed to entitle him. During his Senatorial career, while helping to lead a revolutionary attack on economic and social hardship, he had to expend his energies in political fights at home.

As a Senator, Costigan controlled much of the federal patronage distributed in Colorado, and he used this
to build an effective base of support in Denver. After Ed Johnson, an ambitious young Democrat, was elected Governor in 1932, a struggle began between these two men for control of the state's Democratic Party. 29

Johnson made numerous charges that Costigan used federal relief funds to build his support in the capital city, and the political bickering which continued through the next four years drained the Senator's marginal strength. He became ill in April, 1936, and announced that he would not run for re-election. A few days later, Johnson announced his candidacy for the Senate. 30

Costigan began his political career imbued with a stern dedication to the ideals of democracy, reform, and public responsibility. He had not been able to press these standards on others, and he injured his own political fortunes in the effort, yet the substance of other hopes—for a regulated economic system, for a humanitarian minded government, for the creation of legal sanctions for labor, and for increased respect for the consumer—were achieved.


30 Ibid., 44-45, 62-64.
In the Republican era Costigan chose to make a contribution to society through the Tariff Commission. It was a poor selection. The President was responsible for the nation's economic well-being, and independent commissions such as the Federal Trade Commission could not function unless they reflected the Chief Executive's will.

The Tariff Commission was immune to Costigan's efforts to direct its program. Without popular or Congressional support, he was destined to fail. Only his Senatorial career prevented him from remaining unknown to his own generation.
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To Costigan a republican form of government was not just a theory; he felt that the will of the people should select and guide public officials. Often, he thought, popular choices for office were negated by distasteful alliances between business and corrupt politicians. Let the people know the truth, let them exercise their decision at the ballot box, let the votes be honestly counted, and healthy government could be restored. The counterpart of this creed was that public servants must hold inviolate the people's trust.

Between 1910 and 1914, Costigan had many opportunities to put this faith into practice. Breaking away from the Republican Party in 1910, he led insurgents through two gubernatorial elections in 1912 and 1914. His unsuccessful races for the state's top office made him a known figure in Colorado politics and gave him a minor national image. When Theodore Roosevelt left the Progressive Party to fend for itself in 1916, Costigan was shocked and for a time bewildered. Courted by both Democratic and Republican

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8DeLorme, "Costigan," 228. 9Ibid. 10Edward P. Costigan to Honorable E.A. Miller, June 14, 1916, Edward P. Costigan Papers, Norlin Library, Western Historical Collections, University of Colorado, Boulder. Hereafter cited as Costigan Papers.