

The United States and the International Convention for the Abolition of Import and Export Prohibitions and Restrictions*

James Grueff **

Abstract

The International Convention for the Abolition of Import and Export Prohibitions and Restrictions, whose text was negotiated in 1927, is generally considered to have been the first multilateral trade agreement. In the context of its time it can be seen as an impressively ambitious initial attempt to substantially reduce the use of non-tariff trade barriers among the major trading nations of that era. This paper examines why the U.S. attitude toward this agreement was overwhelmingly positive, at least until the lack of sufficient interest on the part of other countries led to the declining status of the accord in the early 1930s. The analysis relies almost exclusively on documents from the late 1920s and early 1930s.

Background

By the late 1920s the United States was acquiring a worldview that encouraged a very positive attitude toward the development of the International Convention for the Abolition of Import and Export Prohibitions and Restrictions (hereafter known as “the Convention”). In these years the U.S. vision had been broadened by the process of becoming, for the first time, the world’s preeminent financial power. In addition, there was a much greater awareness of the importance to the United States of international trade. In his January 1929 summary analysis of the Convention for President Calvin Coolidge, Secretary of State Frank B. Kellogg noted the following:

Indeed, it is estimated that the 18 countries whose representatives signed the convention ... are the customers for more than one-half of the total American exports, and constitute the source of more than one-third of our total imports. ¹

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** Proprietor, Decision Leaders, Rockville, Maryland, USA

¹ Message from The President of the United States, 70th Congress, 2nd Session, Senate, January 3, 1929, page 4. The message from President Coolidge is very brief, but it then provides a letter, without separate title, from Secretary Kellogg that comprehensively describes the U.S. perspective on the Convention.

Furthermore, in the area of non-tariff barriers to trade, a number of European countries had not yet removed many of the severe non-tariff restrictions and prohibitions that they had implemented during the course of World War I. With the appearance of the prospect of developing the Convention, the United States was presented with the opportunity to significantly improve its ability to export, including agricultural products. (During this period U.S. agriculture was in a long-term depression and agricultural surpluses were the major issue for farm policy.)

In his message to President Coolidge, Secretary Kellogg provided the following background and motivation for U.S. involvement in the Convention.

During the course of the World War, most countries deemed it necessary to regulate their commerce with other countries by means of numerous restrictions and prohibitions on importations and exportations. While most of these regulations were gradually removed after the cessation of hostilities, a considerable number of restrictions and prohibitions were kept in force, especially in central Europe. In some countries many commodities still cannot be imported or exported except under license and in limited quantities. These prohibitions and restrictions have been and are causing material detriment to American foreign commerce. They have given rise to discrimination and to diplomatic controversies between the United States and several European countries.

Since particular countries seemed disinclined to withdraw their own restrictions and prohibitions unless other countries should take similar action, it became apparent that a multilateral agreement for the removal of prohibitions and restrictions would be the most acceptable means of dealing with the situation. ²

Negotiating the Convention Text

During the late 1920s the U.S. permanent representative (“plenipotenciary”) in Geneva was Hugh R. Wilson, and he also served as the leader of the U.S. delegation that negotiated the text of the Convention in the fall of 1927. The entire U.S. delegation consisted only of Wilson, four subject matter experts, and a secretary. During the negotiation Wilson had wide latitude for determining the U.S. positions, which was probably necessary since communication with Washington was a basic problem. Instructions from the State Department often arrived late and there was still no direct phone line between Washington and Geneva. ³

² Ibid, page 2.

³ Marvin Lee Downing, “Hugh R. Wilson and American Relations with the League of Nations, 1927-1937,” University of Oklahoma, Ph.D., 1970, pages 39-46.

The United States approached the negotiations with a positive attitude, but then had significant difficulty upon seeing the large number of exceptions demanded by other countries. At one point the United States considered declaring that it would not sign the Convention due to the numerous exceptions and reservations requested, which it feared might make the Convention meaningless. However, Wilson and his superiors in Washington agreed that the United States should remain in the negotiations, both to improve the situation for international trade generally and more specifically to encourage the Central European countries to remove their trade barriers. ⁴

In the final phase of the process the negotiations were moving so rapidly that the United States believed it could not adequately develop its positions, and it had wanted to present its own exceptions and reservations. Therefore, despite 18 other nations becoming signatories, the United States abstained from signing the Convention at the final negotiating session on November 8, 1927. Subsequently Wilson signed the Convention, and presented the U.S. reservations, on January 30, 1928. ⁵

At the next session of the Convention conference, held in July 1928 for the purpose of considering reservations and the conditions for implementation, the United States had the goal of minimizing the total number of reservations. More specifically, the primary U.S. goal was the elimination of import restrictions on cars and films. It succeeded with cars, but could not overcome French resistance on the film issue. Despite various provisions that the United States had unsuccessfully opposed, Wilson and the State Department considered the Convention agreements to be sufficiently acceptable, and Wilson signed the Supplementary Agreement and Protocol on July 31, 1928. ⁶

Accepting the Benefits, but with Reservations

During the period that the Convention was being considered, the U.S. Department of Commerce did an analysis of the then existing import and export restrictions in other countries that would be of interest to U.S. trade and that should be expected to be eliminated due to the terms of the Convention. A wide range of agricultural and industrial products from 13 countries was listed in this analysis (but none from Japan). However, the Commerce Department analysis emphasized that the foremost advantage for U.S. exports would come from the elimination of import licensing, and that the greatest benefit under this category would be derived from the expansion of U.S. automobile exports into Central Europe. ⁷

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Congressional Record – Senate, September 19, 1929, page 3785.

Despite the compelling potential advantages for the United States, it would participate in developing the Convention only if its own domestic priorities could be protected. Probably the best indications of the U.S. priorities for exception and its most pressing political sensitivities are contained in the formal U.S. Government statement that accompanied the signature of the Convention by Hugh R. Wilson on January 30, 1928. The statement contained the following “reservations and conditions:”

(a) That prohibitions or restrictions designed to extend to exported products the regime established within the country in respect of the production of, trade in, and transport and consumption of such products in domestic commerce are not prohibited by the said Convention, provided, however, that such prohibitions or restrictions shall not be applied in such a manner as to constitute a means of arbitrary discrimination between foreign countries or a disguised restriction on international trade.

(b) That the said Convention affects neither the tariff systems nor the treaty-making methods of the participating countries nor the measures taken to ensure the application thereof, including measures to counteract dumping, bounties, subsidies, unfair methods or acts in foreign trade, undervaluation or discrimination. ⁸

Regarding reservation (a) above, the major concern for the United States was its nationwide ban on the sale, production, importation, and transportation of alcoholic beverages. (This sweeping measure, usually known simply as “Prohibition,” was in effect from 1920 to 1933.) Prohibition was the result of an amendment to the U.S. Constitution, and not merely a law, and so in negotiating the Convention U.S. representatives would have had absolutely no option other than to clearly and completely protect its status.

This presumably was the primary reason that the U.S. chose to develop its reservation (a) despite the fact that the language in it is almost completely identical to the language already in paragraph 7 of Article 4 (the exceptions article) of the Convention. The primacy of the Prohibition issue is also reflected in Secretary Kellogg’s message to President Coolidge, in which while briefly listing the exceptions protected in Article 4, he points out that paragraph 7 of that article (the same language as reservation [a]) “... clearly covers the case of liquor prohibition.” ⁹

Concerning reservation (b) above, during this period of American history, and especially with Republican presidents in the White House during the 1920s, the ability to use tariffs for import protection was considered an important policy tool for the United States. Therefore, as was the case with Prohibition, U.S. negotiators would have had no choice but to preserve complete flexibility for the United States in the setting of tariffs. This is confirmed in Secretary Kellogg’s letter to President Coolidge, in which he states simply regarding reservation (b): “The second reservation was made with respect to the tariff.” ¹⁰

⁸ Statement by the United States of America in signing the Convention, Hugh R. Wilson, Archives of the Secretariat of the League of Nations, January 30, 1928.

⁹ Message from the President, page 3.

¹⁰ Ibid.

Article 4 – Exceptions to the Disciplines of the Convention

Of the eight paragraphs of exceptions included in Article 4 of the Convention, it appears that paragraph 7 was the most important to the United States due primarily to the necessity of protecting the policy of Prohibition, as described above. However, Secretary Kellogg added that the language of paragraph 7 (the same language as U.S. reservation [a]) was also needed “to maintain quality standards of cotton and wheat” and similar U.S. measures. ¹¹

Beyond priority paragraph 7, it is difficult to determine how the United States might have assessed the importance of the other exceptions to the Convention listed in Article 4. One slight indicator could possibly be the listing of the exceptions by Secretary Kellogg in his message to President Coolidge. The Secretary briefly listed six of the eight paragraphs contained in Article 4, but did not mention at all paragraph 5, national artistic or historical treasures, or paragraph 8, products subject to monopolies. ¹² It is plausible that these two categories were of the least interest to the United States.

On the other hand, from an exporter perspective, the United States did not appear to be very concerned about any of these exceptions. In his summary letter Secretary Kellogg noted, “The restrictions which the different countries have indicated as desiring to make exceptions of are, in most cases, of little importance for American trade.” ¹³

Although U.S. officials responsible for the negotiations generally seemed confident that the Convention would not provide a basis for challenging U.S. laws, they did have to be especially careful in certain areas. For example, by the late 1920s the United States had numerous environmental and conservation laws in effect. The conservation laws, in particular, included import prohibitions, such as for wild salmon and for feathers taken from wild birds. ¹⁴

However, it was the understanding of the U.S. delegation to the Convention that these laws were not inconsistent with the terms of the Convention. (Regarding conservation laws, the addition to the Convention of Ad Article 4 with its language covering “measures taken to preserve [animals and plants] from degeneration or extinction” was particularly important.) Just before the United States signed the Convention, the U.S. Tariff Commission reported to the U.S. delegation:

¹¹ Ibid.

¹² Ibid.

¹³ Ibid, page 4.

¹⁴ Dispute Settlement Reports/World Trade Organization, Volume 7, 1998, page 2927. The language pertaining to this and the following footnote was derived or quoted from a U.S. submission to the WTO panel in the case “United States – Import Prohibition of Certain Shrimp and Shrimp Products.” Much of the case focused on the application of extraterritorial trade measures for purposes of conservation or protection from extinction.

The import prohibitions and restrictions now in force in the United States are entirely, as was frequently made clear in the course of the debates, of a non-economic nature. They consist of measures for the protection of public health and public morals, for safeguarding plants and animals against disease and extinction, and of measures which are intended to apply to imports and exports the same control as is applied to corresponding commodities in domestic trade.

Our right to maintain these prohibitions and restrictions would in no way be affected by our signing the Convention. We have abundant evidence, both in the debates in plenary sessions and in committees, that the right of any country to maintain such measures of control would not be infringed. ¹⁵

High-level Political Support

Once the negotiations had given firm shape to the text of the Convention, the assessment from the highest political levels in Washington was clear. Signing and ratifying the Convention were undisputedly in the best interests of the United States. The U.S. President when the Convention was ratified, Herbert Hoover, was previously the Secretary of Commerce while the Convention was being negotiated. While at the Commerce Department, Secretary Hoover wrote:

While it is regrettable that the convention as finally worked out has been weakened in some respects from the original draft, by the restrictions which various countries are permitted to maintain temporarily, it appears that the United States has nothing to lose and considerable to gain by signing the convention at this time. According to my information, it has not been the policy or practice of the United States to maintain any import or export restrictions of the type condemned by the convention, with the possible exception of our export restriction on helium, and that can well be regarded as covered by the general reservation for restrictions on military supplies. This country would, therefore, appear to be in harmony with the standards of trade control established by the convention, without having to make any changes in our present practices. ¹⁶

In his message to President Coolidge when the Convention was notified to the Senate, Secretary of State Kellogg declared in effect that there was only gain and no downside for the United States, thereby also apparently implying that there was very little political risk or exposure, at least domestically. Secretary Kellogg's language on this point includes the following:

¹⁵ Ibid.

¹⁶ Congressional Record – Senate, September 18, 1929, page 3744.

The United States maintains no export or import prohibitions or restrictions such as those to which the instruments herewith presented are addressed. Other countries to which American producers sell their goods and to which they look for supplies of certain raw materials, do maintain elaborate systems which, under these instruments, they must abolish. Accordingly, if the convention enters into force as to the United States, the prohibitions and restrictions stipulated in existing American laws would not be affected, but the United States would obtain the benefit of action on the part of other States in abolishing restrictions and prohibitions. ¹⁷

In the Shadow of Smoot-Hawley

In the presidential election campaign of 1928 Herbert Hoover promised that one of his top priorities would be to increase tariffs on agricultural imports. After winning the election, Hoover saw his promise turn into legislation that would raise tariffs on both agricultural and industrial imports. This legislation, eventually known as the Smoot-Hawley Tariff Act of 1930, has been widely viewed as one of the most infamous and economically damaging pieces of trade legislation in history.

The debate in the U.S. Congress on the controversial Smoot-Hawley bill was very contentious, and it covered the period from roughly May 1929 until March 1930. As a comparison of timelines, the text of the signed Convention was provided to the U.S. Senate on January 3, 1929 for its consideration, and it was ratified by the Senate on September 19, 1929. (In the United States laws must be passed by both the House of Representatives and the Senate, while only the Senate has the responsibility for ratifying international treaties and conventions.)

The combination of the intense controversy generated by the Smoot-Hawley legislation with, on the other hand, the perception that the Convention presented no meaningful political or economic risk, meant that relatively very little political attention was given to the Convention. This was clearly illustrated by the reaction of Senator William King from Utah when the final text of the Convention was introduced into the full Senate for debate on ratification. He declared: “I have not had an opportunity of examining this treaty; in fact, I did not know that such a treaty had been negotiated.” ¹⁸

Debate in the Senate

The issue of ratification of the Convention was debated on the floor of the U.S. Senate on September 18 and 19, 1929. Before that it had to be approved by the Senate Committee on Foreign Relations, which it was by unanimous consent of the committee members.

¹⁷ Message from the President, page 4.

¹⁸ Congressional Record – Senate, September 18, 1929, page 3744.

The debate on the Senate floor was led by Senator William Borah of Idaho, who was the Chairman of the Foreign Relations Committee. Senator Borah answered a number of basic questions from his colleagues regarding the Convention. These included: Does the Convention reduce foreign tariffs? (No); Is it reciprocal? (Yes); Does it limit U.S. embargoes? (Yes); Can the United States prohibit helium exports? (Yes). ¹⁹

There was only one issue that received extensive and substantive discussion, and that had to do with the language of Section VI of the Protocol to the Convention: “Prohibitions or restrictions applying to prison-made goods are not within the scope of the Convention.” In other words, such prohibitions or restrictions would continue to be allowed. One senator in particular, John Blaine of Wisconsin, was very concerned that this language might not apply to “goods made under forced or compulsory labor” but by workers that were not formally considered prisoners. ²⁰

This issue briefly threatened to delay Senate approval of the Convention, with the Convention’s deadline for ratification by signatory countries (September 30) fast approaching. However, Senators Borah and Blaine were able to quickly agree on a solution, which took the form of a formal understanding by the Senate to accompany ratification.

It is understood that the provision of Section VI of the protocol to the convention, excepting from the scope of the convention prohibitions or restrictions applying to prison-made goods, includes goods the product of forced or slave labor however employed. ²¹

With this compromise accepted, the Senate then approved ratification of the Convention by voice vote, a procedure used for proposals considered to be essentially without opposition. The Senate then went even further and gave the President express authority to bring the Convention into effect for the United States even if the minimum number of ratifying countries required to bring the Convention into force for all signatories was not reached. ²² (The United States did this later in 1929.)

The Senate debate included no discussion, questions or comments regarding paragraph 4 (protection of human, animal or plant health) or paragraph 7 (in the U.S. view covering Prohibition and quality standards for cotton and wheat) of Article 4 of the Convention. In fact the only mention of any of the exceptions contained in Article 4 was a brief reference to “moral or humanitarian grounds” in paragraph 2 during the discussion of prison-made goods. ²³

¹⁹ Ibid.

²⁰ Ibid, pages 3744-3745.

²¹ Congressional Record – Senate, September 19, 1929, page 3785.

²² Ibid.

²³ Congressional Record – Senate, September 18, 1929, pages 3744-3745.

Other than the prison-made goods issue, the only challenge for Senator Borah in obtaining Senate ratification of the Convention appeared to be a procedural one. As a somewhat ironic and historically symbolic coincidence, Senator Borah was competing for Senate floor time with Senator Reed Smoot, who was trying to advance his later infamous Smoot-Hawley tariff bill on the same days that the Convention was being considered.

Support from the Intelligentsia

As noted above, unlike the Smoot-Hawley proposed legislation, the Convention was not a subject of popular discussion. However, various articles from that period in publications generally read by the U.S. intellectual elite appear to indicate a positive perception of the Convention on the part of those who were aware of it. For example, in its April 1932 edition the leading U.S. publication for foreign policy, *Foreign Affairs*, described the Convention as addressing “obnoxious instruments” and “super-protective devices” in this context:

... in October 1927 ... an international conference assembled to discuss the abolition of restrictions and prohibitions on imports and exports. Their deliberations resulted in a multilateral treaty which was signed by the representatives of 19 nations. In it they undertook to abolish, subject to certain reservations, all restrictions and prohibitions of an economic character and to refrain in the future from the use of these obnoxious instruments of commercial policy. It should be explained at once that customs duties, whether protective or for revenue purposes, were specifically excluded from the treaty. It referred only to embargoes, licensing systems, the fixing of quotas and other super-protective devices. ²⁴

In addition, shortly after the U.S. ratification of the Convention, in its edition of December 7, 1929, the *New York Times* (then and now considered the most-respected U.S. newspaper) described the Convention in this manner:

The convention is an outcome of several years work and was initiated by the League of Nations. Its application will make for an easier flow of commerce from one signatory country to another by removing several hundred restrictions which impede and frequently prohibit imports and exports without in any way advancing the interests of the countries involved. These restrictions have nothing to do with tariffs. ²⁵

²⁴ Percy Wells Bidwell, “Trade, Tariffs, the Depression,” *Foreign Affairs*, April 1932

²⁵ Carlisle MacDonald, “Parley on Barriers to Trade is in Snag,” *New York Times*, December 7, 1929, page 6.

Withdrawing from the Convention

Throughout the late 1920s and early 1930s the United States was consistently supportive of the Convention. When the number of nations to ratify the Convention during 1929 turned out to be insufficient to bring it into effect for all signatories, the United States was one of only seven countries that committed to adhering to the terms of the agreement on their own, in accordance with Article 17 of the Convention.

Moreover, when the United States decided to leave the Convention in 1933, prompted most immediately by the departure of Great Britain, it appears to have done so reluctantly and with regret. The following are excerpts from a telegram to Washington, dated June 19, from Secretary of State Cordell Hull, who was at the London Monetary and Economic Conference of 1933.

My judgment is that various considerations among which are the possible developments of our domestic policy and the decision of the British Government make withdrawal by the American Government from the Import and Export Prohibitions and Restrictions Convention advisable. This convention has been the subject of some discussion in the Conference which tends to indicate that it is generally regarded as being poorly adapted to the present situation and there is very little possibility that other nations may adhere to it.

I desire therefore that the Department notify the Secretary General of the League of Nations of the American withdrawal in conformity with the requirements of the convention and usual practice. I am reluctant to take this action at the present time. It is important that it not be construed as evidence of any new decision by the American Government to shape its policy on domestic rather than on international lines. The note to the Secretary General besides therefore covering the formal notification should contain an explanation in substance as follows:

The Government of the United States takes this action with regret. It has been disappointed that so few governments have seen their way clear to become parties to this agreement. Furthermore, it would appear that in the judgment of many governments the convention has become somewhat unadapted to present conditions. The recent withdrawal of other governments has emphasized this conclusion. The Government of the United States still favors a policy of abolition either outright or gradual by international action of the type of restriction in international commerce which is dealt with in the convention. It is prepared to participate in more effective action directed towards that end. ²⁶

²⁶ Withdrawal of the United States from the Convention, U.S. Department of State/Foreign Relations of the United States Diplomatic Papers, General, 1933, pages 784-785.

The withdrawal of Great Britain left, besides the United States, only Japan, Norway, Denmark and the Netherlands as the nations bound by the Convention. Although the British departure was the event that most immediately triggered the U.S. decision to formally leave the Convention, additional domestic policy considerations had now become an important factor for the United States as well. By now there was a new U.S. President, Democrat Franklin D. Roosevelt, and by mid-1933 it was becoming clear that for President Roosevelt domestic economic recovery from the Depression would take precedence over international agreements and obligations.

In an internal telegram from June 1933 a high-level State Department official stated that "... certain provisions of the new Recovery Act 5 which authorize the President to license imports and impose embargoes make it imperative that we give immediate consideration" to the option of withdrawing from the Convention. ²⁷

The U.S. withdrawal in June 1933 sealed the fate of the Convention. The window of opportunity for the United States and the rest of the international community to firmly establish international law in the area of non-tariff measures had closed, not to open again until many years later.

²⁷ Ibid, page 784.

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