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## The Struggle for Independence, 1763–1789

The regulation of America's foreign trade played an important role in shaping events during the critical period around the country's move toward independence and nationhood. While the conflict between Britain and the thirteen North American colonies was ultimately about political power and sovereignty, many disputes concerned the restrictions and taxes that Britain imposed on colonial commerce. Lacking any political voice in Parliament to influence those policies, the colonists responded by employing the only weapons at their disposal, including economic pressure through the boycott of British goods. After having fought successfully for independence, however, Americans discovered that engaging in trade outside the British Empire was difficult. These problems were compounded by a weak central government under the Articles of Confederation, which prevented Congress from establishing a national trade policy or imposing import duties to raise revenue. These trade-policy difficulties were key factors in setting the stage for the constitutional convention of 1787.

### TRADE AND THE AMERICAN COLONIES

For more than a century after the first permanent English settlement in North America was established at Jamestown in 1607, the New World settlers were heavily dependent on foreign trade. Trade was essential to the well-being of the new arrivals, furnishing them with clothing and blankets, nails and firearms, cooking implements and metal goods, and other tools and materials that could not be produced locally. Without these imports, the standard of living of the colonists might have suffered so much

that they would not have stayed. As McCusker and Menard (1985, 71) put it, "Overseas commerce did not merely make colonial life comfortable, it made it possible."

Overseas trade with Britain was an integral part of the economic life of the North American colonies, even though they were separated by some three thousand miles across the Atlantic Ocean. Through the seventeenth and eighteenth centuries, the colonists paid for imports of manufactured goods from Britain by exporting cash crops, such as tobacco and rice, and abundant local produce, such as fish and wood. The terms of trade—the price of exported goods relative to the price of imported goods—was a key determinant of economic welfare in the colonies. A rise in the price of tobacco because of increased European demand, for example, would enable the colonists to import more manufactured goods in exchange for those exports. A decline in the price of commodity exports not only made European imports more expensive to procure, but reduced agricultural income and diminished the economic prospects of the colonies. As a result, fluctuations in the prices of exported and imported goods had a pronounced impact on the growth and welfare of the colonial economy.<sup>1</sup>

By the early eighteenth century, New World abundance along with overseas trade allowed the colonists to enjoy a relatively high standard of living. Adjusting for the different price levels between Britain and the colonies (that is, using a purchasing-power comparison), real per capita income in the colonies was at least 50 percent higher than in England between 1700 and 1774.<sup>2</sup> This brought a steady stream of European migrants to America, and the colonies grew in size and economic importance. By 1770, the population of Britain's thirteen North American colonies was 2.1 million, most living near the seacoast. By contrast, the population of Great Britain was just over 7 million at the time. In terms of economic output, the colonial economy was about a third the size of Britain's in 1774. Thus, by the late eighteenth century, North America was by no means a small and insignificant part of the world economy.

The main economic activity in the colonies was the cultivation of agricultural goods and the production of home crafts. About 85 percent of the labor force was employed in the agricultural sector, some producing crops for export but most for local consumption. Even though colonial society was largely rural and agrarian, nearly all Americans were linked in some way to the larger world market. Whether they were raising livestock in New England, wheat and corn in Pennsylvania, tobacco in Virginia, or rice in South Carolina, the colonists did not practice local self-sufficiency

unless circumstances—mainly distance to the market—so dictated.<sup>3</sup> As Jensen (1969, 108–9) notes,

The American farmers at the outset of the Revolution were utterly dependent, therefore, for their growth and prosperity, on the sale of farm produce in overseas markets, as were American fishermen and lumbermen. Any proper economic map of America at the beginning of the Revolution would show America as a mere fringe between the Atlantic Ocean and the Appalachian Mountains, with a network of lines crisscrossing the Atlantic between America and the West Indies, Africa, the Mediterranean, and the British Isles. Most Americans of the eighteenth century understood this, and they were more concerned with what went on in those areas than they were with what went on a hundred miles inland from the ocean, for it was in the far-flung seaports scattered around the Atlantic Ocean that Americans marketed their surpluses of tobacco, rice, indigo, wheat, and Indian corn. Hence it was that American newspapers were filled with political news, and crop and weather conditions even in such far-away places as Turkey and Russia, for what happened there might well affect the price of American wheat and corn.

The North American colonies could be divided into four economic regions, each endowed with different resources and hence specializing in different productive activities.<sup>4</sup> With its forests and proximity to the sea, New England was dominated by shipping-related activities, such as shipbuilding, shipping services, fishing, and whaling. Merchant shipping gave rise to production in related industries, especially wood and lumber (for masts and ship construction, caskets and barrels), finance, and insurance. Although many small farms in the region produced corn, wheat, and livestock, New England had relatively poor agricultural land and was a net importer of food.

The Mid-Atlantic states of New York, Pennsylvania, New Jersey, and Delaware were more economically diverse. The ports of New York and Philadelphia were major urban centers and hubs of commerce, but were linked to the domestic coastal trade as much as overseas trade. New York was a center for commercial services. Philadelphia, the largest city in colonial America, was the home to small manufacturers and craft production, including iron works and flour mills, making the region's residents somewhat less dependent upon manufactured imports from Britain. The

area's staple products were grain and flour: many small farms in New York and Pennsylvania grew wheat, corn, barley, and rye, some of which was exported to the British Empire.

The South produced major cash crops for bulk export: the upper South (Maryland, Virginia, and North Carolina) specialized in tobacco, while the lower South (South Carolina and Georgia) produced rice and indigo. These crops were produced on relatively large farms employing slave labor that had been transported from Africa. This region had the highest per capita exports and the strongest dependence on the world market, but also had the least diversified economy and relied on British financing and transport to conduct its trade.

Thus, the different regions of the colonies specialized in the production of different exportable goods: tobacco from Virginia and Maryland, wheat and flour from Pennsylvania and New York, rice and indigo from Carolina, and wood products and fish from New England. The top three commodity exports—tobacco (27 percent), wheat, flour and breadstuffs (19 percent), and rice (11 percent)—comprised well over half of total merchandise exports from 1768 to 1772. New England also provided shipping services and earned more income from the carrying trade and insurance than from exporting any single commodity.<sup>5</sup>

The earnings from merchandise exports and shipping services enabled the colonies to pay for their imports. The port cities were the key points of contact with the rest of the world, and most foreign goods were imported through the seaports of Philadelphia, New York, Boston, and Charleston. About 80 percent of these imports consisted of manufactured goods from Britain. Woolens and linens were among the most important, but imports included a variety of other products, such as paper, glass, and metal goods. Commodities for household consumption, such as tea and alcoholic beverages, also made up a sizeable portion of imports.<sup>6</sup>

The importance of foreign trade in an economy is commonly measured by the ratio of exports or imports to gross domestic product (GDP). In 1774, imports from Britain amounted to roughly 8 to 9 percent of colonial GDP.<sup>7</sup> Because Britain accounted for more than 80 percent of America's imports prior to the Revolutionary War, the ratio of total merchandise imports to GDP was probably about 10 percent. This is an imperfect indicator of the economic importance of trade, because the prices of all traded goods were determined by the world market and thereby had a pervasive effect throughout the colonial economy. These prices connected all households to the world market, either through prices they received for the produce they sold or the prices they paid for the goods they purchased.

## THE ECONOMIC CONSEQUENCES OF THE NAVIGATION ACTS

Although the commodity composition of America's foreign trade was largely determined by regional resource endowments and driven by market forces, the geographic pattern of trade was not. Instead, the British Parliament had enacted the Navigation Acts, which artificially channeled colonial trade through Britain and its territories in the West Indies. These trade regulations and subsequent taxes and customs duties led to friction between Britain and America and helped stimulate colonial demands for independence.

The purpose of the Navigation Acts was to promote Britain's maritime power and ensure that trade within the Empire served its commercial interests. First applied to the American colonies in 1651, the Navigation Acts involved a complex web of government policies. These mercantilist policies—designed to promote British commercial interests by promoting exports and restricting imports—regulated the nationality of the ships and crews employed in British and colonial commerce, restricted the destinations to which colonial goods could be shipped and the sources of colonial imports, favored selected British industries with subsidies, preferential tariffs, charter monopolies, and other encouragements, and prohibited the development of certain industries in the colonies that might harm producers in Britain.

From America's standpoint, the most important regulation was the requirement that almost all its exports and imports be shipped via Britain. In terms of exports, all "enumerated" goods had to pass through a British port before reaching their final destination. About three-quarters of American exports to Britain were enumerated, the most important of which was tobacco. Although American tobacco received preferential treatment in Britain (discriminatory duties were imposed on tobacco imported from Spanish and Portuguese colonies), the overwhelming majority of tobacco exports was reexported to Europe. This indirect routing imposed extra costs on American exporters and reduced the prices received by tobacco planters. If tobacco had not been enumerated and could be sold directly to European customers, the income of tobacco planters would have been anywhere from 15 to 35 percent higher, according to Sawers (1992, 269). Thus, the Navigation Acts imposed a significant burden on a politically influential, trade-dependent group, the Chesapeake tobacco farmers of Maryland and Virginia.

Rice exports were partially enumerated; exports destined for southern

Europe could be shipped directly, but those for northern Europe required passage through Britain. This limited the adverse impact of these regulations on the prices received by planters in South Carolina. Other exports benefited from British bounties (subsidies). These included exports of indigo, naval stores, and lumber, although the benefit to the colonies was not large because the subsidy margin and volume of exports were relatively small. Other agricultural goods, notably wheat and flour, had limited access to the British market but were given preferential access in the British West Indies.

The Navigation Acts did not significantly distort colonial imports. Most of America's imports from Britain were made in Britain, the world's leading producer of manufactured goods. For some of these goods, such as gunpowder, linen, sailcloth, silk, and refined sugar, the colonies benefited from British export subsidies that lowered their price to American consumers. Britain also permitted the colonies to import certain products directly from the British West Indies and southern Europe, such as salt for curing fish and Madeira wine. However, most non-British imports, whether from Europe or Asia, first had to be shipped through Britain. About 20 percent of the colonies' imports from Britain consisted of foreign goods that originally came from Asia, mainly tea and pepper, or from Europe. This artificial routing through Britain involved extra fees, commissions, warehouse rents, and transportation costs and is estimated to have raised the costs of imports of European and Asian goods by about 20 percent.<sup>8</sup>

In a pioneering calculation, Lawrence Harper (1939) tallied up the costs and benefits to the colonies from these trade restrictions for the year 1773. He estimated the total cost to be \$3.3 million, only about 2 percent of colonial income. The enumeration of tobacco was by far the largest component, accounting for three-quarters of the total cost. Thomas (1965) revised Harper's calculation down to \$2.7 million, but also took into account the benefits to the colonies from being part of the British Empire. These benefits were estimated to be \$1.8 million and arose in part from the lower insurance rates on shipping due to the protection provided by the Royal Navy. In this broader calculation, the net cost to the colonies came to just \$0.9 million, a slight 0.6 percent of colonial income.<sup>9</sup> As McCusker and Menard (1985, 354) conclude, "Whatever the costs of membership in the British Empire, they were largely offset by the benefits: naval protection; access to a large free-trading area; easy credit and cheap manufactures; and restricted foreign competition."

The fact that the aggregate burden of Britain's commercial policies on

the colonies was small, however, does not mean that these restrictions were unimportant in spurring demands for independence. Only a minority of the colonial population is believed to have actively supported independence in 1776, and this vocal and politically powerful minority may have been precisely those most affected by Britain's trade policies. In fact, about 90 percent of the economic burden of the Navigation Acts is believed to have fallen upon the southern colonies, particularly tobacco planters in Maryland and Virginia, and might have reduced the region's income by as much as 2.5 percent in 1770.<sup>10</sup>

It was not a coincidence that these planters strongly supported independence. Virginians believed, apparently with good reason, that freeing the tobacco trade from Britain's commercial regulations would make the crop much more profitable. Indeed, in the 1640s, Virginia's House of Burgesses petitioned for a "free export of their Tobacco to foreign Markets directly," but their request was rejected by the British Privy Council. In 1774, in a draft of instructions to its delegates to the Continental Congress, the Virginia legislature declared that "the exercise of a free trade with all parts of the world, possessed by the American colonists as of natural right, and which no law of their own had taken away or abridged" was a subject of "unjust incroachment" by the British authorities.<sup>11</sup>

Another group that held grievances against British policy were urban merchants in Boston, New York, and Philadelphia. These merchants were also dismayed by British commercial regulations that restricted their freedom to trade with other regions of the world. "The merchants of revolutionary America made up but a very small part of the population, but they wielded economic and political power within most of the Colonies far out of proportion to their numbers," Jensen (1969, 109) notes. Meanwhile, farmers who made up the bulk of the population "did not share the economic grievances of either merchants and tradesmen of the coastal cities or of the tobacco growing planters of Virginia and Maryland" and only later supported the movement toward independence.<sup>12</sup>

In sum, the colonies were not impoverished and exploited victims of British rule. The costs of British mercantilist trade regulations were roughly offset by the benefits of protection within the British Empire. In fact, the colonies had conducted their business under the Navigation Acts without complaint for more than a century and had flourished as a result. "The dispute between Britain and the colonies was not over Parliament's right to regulate this or that trade, to tax a particular activity, or to pursue a specific policy," McCusker and Menard (1985, 357) conclude. "The conflict centered on the issue of power over the long haul, on the shape of

things to come, on who would determine the future of the British Empire in the Americas."<sup>13</sup> In a comprehensive review of contemporary writings, Dickerson (1951) could not find any evidence that the Navigation Acts or Britain's commercial policies were a major source of complaint in the colonial assemblies. At the same time, such trade regulations did adversely affect certain groups, particularly tobacco farmers. They and others were to become among the most vocal proponents of independence and played a catalytic role in the drive for national sovereignty.

With the colonies generally prospering under British rule, something must have changed to bring about the resistance that ultimately led to revolution. That change began after the end of the Seven Years War in 1763, when Britain attempted to institute new policies that the colonists believed would threaten their comfortable state. After 1763, British policy aimed to extract revenue from the colonies to pay for the defense costs incurred on their behalf during the war. This policy shift implied a major increase in the tax burden on the colonies. While most colonists accepted Britain's long-standing regulation of America's trade, they resisted British attempts to put more of the financial burden of supporting the colonies onto the colonists themselves. By discounting the benefits of protection within the British Empire, the colonists saw the new taxes and regulations as a threat to their prosperity and future well-being. The colonies were in a position of economic strength, not weakness, and this gave them the confidence to confront their overseas rulers.

### SHIFTING THE TAX BURDEN

The Seven Years War in 1763, known as the French and Indian War in the United States, was undertaken in large part to protect the colonies from neighboring threats. The war proved to be very expensive, increasing the British government's debt from less than £80 million in 1757 to £134 million in 1764. The annual interest on this debt amounted to nearly £5 million at a time when the government's annual revenue was only about £9 million.<sup>14</sup>

In addition to the fiscal challenge of financing this debt, the British government had to pay the considerable ongoing cost of protecting the newly enlarged North American territories. As a result of its victory, Britain acquired a huge amount of land—not just most of North America east of the Mississippi River, but Canada and parts of the West Indies as well—and it all needed to be defended. The cost of maintaining a standing army of ten thousand soldiers in North America amounted to nearly 4 percent of

the British government's budget.<sup>15</sup> With the external threat of the French and Indians having been removed, Americans failed to appreciate the substantial costs that Britain incurred in defending the colonies.

Given the economic size of the colonies and the fact that expenses had been and were being incurred on their behalf, British officials naturally thought that the colonists should contribute more to the costs of defense and the servicing of debts. Therefore, successive British administrations sought to raise additional revenues from what they viewed as the wealthy and undertaxed American colonies. To the dismay of the British authorities, most of the measures they enacted were met with stiff resistance.

In the Sugar Act of 1764, Parliament required that the colonies pay a three-shilling duty on sugar and molasses imported from places other than the British West Indies. This was actually half of the official duty that dated back to 1733, but that tax had been routinely ignored by American merchants and British customs officials. The customs service was also reinvigorated to better enforce existing laws to reduce smuggling and increase revenue. These measures generated grumbles in the colonies, but no outright opposition.

The Stamp Act of 1765 levied duties on public documents and printed materials, such as legal documents, newspapers, property deeds, and playing cards. Although such taxes were common in Britain, these new internal taxes provoked sharp protests in the colonies. Residents of the commercial colonies, principally Massachusetts and New York, argued that they had not been properly represented in Parliament for such internal taxation to be accepted. They took the position that Britain had the authority to regulate the foreign trade of the colonies, but could not impose internal taxes without their consent. British officials rejected the distinction between external and internal taxes and asserted that they had the power to impose any taxes they chose.

Aside from harassing the local officials responsible for enforcing the Stamp Act, colonial opponents of the measure searched for a way of eliminating the tax altogether. The Stamp Act Congress, the first joint meeting of representatives of all the colonies initiated on their own, sought to formulate a unified response to the British action. In October 1765, colonial delegates adopted a Declaration of Rights, which complained that "the duties imposed by several late acts of Parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous, and, from the scarcity of specie, the payment of them absolutely impracticable." The Congress also stated that taxes should not be imposed without their consent and noted that "the restrictions imposed . . . on the

trade of these colonies will render them unable to purchase the manufactures of Great Britain." The colonies also agreed to try to force Britain to repeal the Stamp Act through commercial pressure in the form of non-importation agreements.<sup>16</sup>

The non-importation movement began as a private initiative. In late October, two hundred leading merchants in New York vowed to stop importing British goods starting in January 1766. Philadelphia and Boston merchants soon followed. The leaders of the boycott thought that the lost sales would force British exporters to lobby on their behalf in London. In November 1765, General Thomas Gage, the British commander in Boston, described the strategy this way:

Their first plan of clamor, in terrifying the stamp officers, and even threats of rebellion to prevent the stamps being issued, has been completed throughout. And in order to gain the merchants in Great Britain to their interest, the American merchants have wrote that no dry goods may be sent out to them, unless the Stamp Act is repealed, and some go as far as to say they will not pay their debts but upon that condition; and they flatter themselves, from all these circumstances that the Parliament will be prevailed upon to repeal the act.<sup>17</sup>

The colonial merchants were not simply acting out of principle. They were also taking advantage of the opportunity to reduce their large inventories, which had accumulated during the recession that followed the initial boom at the end of the French and Indian War, at much higher prices than would otherwise be possible.

The impact of the colonial boycott of British goods is uncertain, because non-importation lasted just a few months and coincided with a general economic slowdown. The volume of America's imports from Britain fell 7 percent in 1766, after having fallen 14 percent in 1765, making it hard to disentangle the impact of non-importation from the recession in reducing trade.<sup>18</sup> The falloff in North American orders was keenly felt in Britain, which was also experiencing an economic downturn, and British merchants flooded Parliament with petitions describing the hardship and loss of employment arising from the cancellation of American orders for their goods.<sup>19</sup>

Even if the economic impact of non-importation was modest compared to the recession, the political impact was large enough that the protesters achieved their objective: pressure from British manufacturers was an important factor in Parliament's decision to repeal the Stamp Act. Recog-

nizing that the Stamp Act and sugar duties were generating little revenue and much ill will, Parliament repealed both measures in March 1766. The non-importation movement quickly collapsed once word of the repeal arrived in the colonies.

However, along with the repeal, Parliament also passed the Declaratory Act, which asserted its full power and authority to make laws and govern the colonies and reiterated its legal right to tax both external and internal commerce. With Britain still desperate to tap into the colonial economy as a source of revenue, the new chancellor of the exchequer, Charles Townshend, proposed establishing customs commissioners in the major colonial port cities to strengthen the enforcement of the customs laws and ensure the collection of import duties. Townshend also proposed a new set of low duties on many different commodities—initially on tea, glass, paper, lead, and painting materials, and later on other items—to discourage smuggling and the evasion of duties. Townshend was careful to ensure that these duties were imposed on external trade and did not include the objectionable internal taxes.

Yet the Townshend measures, which included the controversial policy of quartering soldiers in private homes, provoked even greater colonial resistance than the Sugar Act had. Once again, it triggered a trade boycott. This time, as opposition to Townshend's policies brewed during 1768, civic leaders, rather than city merchants, orchestrated the movement for the non-importation or non-consumption of British goods. Debate over the duties festered for two years before merchants could be persuaded to enact effective non-importation agreements. As before, some merchants initially supported non-importation as an opportunity to unload inventories at higher prices, but now business was generally good, and there was little desire among merchants to stop trade. They depended upon commerce for their livelihoods and did not wish to see non-importation carried on beyond a short period of time. By contrast, local artisans and craftsmen enthusiastically embraced non-importation. These self-employed shoemakers, blacksmiths, soap and candle producers, furniture makers, ropemakers, and the like, produced goods that competed against British imports. They wanted boycotts not only to put pressure on Britain, but to help reduce foreign competition and promote local manufacturing.<sup>20</sup>

Thus, this second non-importation movement only emerged gradually and unequally across the colonies. By the spring of 1769, the merchants of three major port cities—Philadelphia, New York, and Boston—had implemented non-importation agreements. By the summer of 1769, the non-importation movement had spread to the southern colonies. Imports in

Carolina and Georgia declined in 1770, but they did not fall at all in Maryland and Virginia, where tobacco planters had large debts to service. Still, the overall volume of imports from Britain dropped 38 percent in 1769.

By this time, yet another British ministry was taking yet another look at customs duties imposed in America. Lord North's administration saw once again that the duties were failing to raise much revenue but had stoked popular resentment. North proposed undoing the taxes of his predecessor, and in April 1770 Parliament repealed the Townshend duties, with the exception of the one on tea, which had raised three-quarters of the revenue. Unlike the Stamp Act repeal, this action was not the result of political pressures from British merchants adversely affected by non-importation. Unfortunately for the leaders of the non-importation movement, the colonial boycott occurred at a time when the orders of British manufacturers were running strong. The rising demand for woolen exports in Europe due to the Russo-Turkish war and a bountiful domestic harvest all served to cushion the British economy from the decline in trade with America.<sup>21</sup> Although trade fell even more with this non-importation effort than during the Stamp Act protest, the effort failed to inflict serious damage on British mercantile interests, and they were not instrumental in achieving repeal of the duties. However, the timing of events gave many colonists the impression that the British government had capitulated a second time to their demands.

The leaders of the American non-importation movement strenuously argued that the boycott should continue until the duty on tea was abolished as well. But merchants could not resist taking advantage of the British repeal as an excuse to resume trade, and the non-importation movement quickly collapsed. Trade recovered somewhat in 1770, and then shot up dramatically in 1771, the first full year in which trade was restored.

By this time, a pattern had been established: when new British taxes were imposed, a non-importation movement would begin, and British policymakers would retreat. The colonists drew the conclusion—correctly in the case of the Stamp Act but incorrectly in the case of the Townshend duties—that British policy could be manipulated with American trade embargos. The colonists took from this experience an exaggerated impression of their ability to coerce British policy through economic means. In fact, non-importation only had a significant impact when it coincided with an economic downturn in Britain; the colonies could have only a modest influence on the country, because just 15 percent of British exports were destined for America in 1765.<sup>22</sup> Yet the impression stuck that America pos-

sessed great commercial leverage. Later, Thomas Jefferson and James Madison would attempt to use commercial coercion—boycotts, embargoes, and non-importation—against Britain and were repeatedly surprised and frustrated by the ineffectiveness of these actions in bringing about desired changes in Britain's policy.

From 1770 until early 1773, trans-Atlantic relations were eerily calm. During this period, the colonial grievances festered, but the British government did not undertake any new actions that might become a rallying cry for protest. Then an economic crisis hit Virginia, while a new tea act inflamed Massachusetts. In the South, Virginia planters, already weighed down by heavy debts and resentful of the control of their trade by Scottish agents, faced a devastating collapse in tobacco prices in 1772 and 1773. The trigger was a financial crisis in Britain that was quickly transmitted to the colonies. Tobacco prices dropped by half and credit extended to Virginia and Maryland planters was curtailed. The debt burden of tidewater planters soared, leading to a wave of foreclosures and imprisonment. The catastrophe intensified anti-British sentiment, and Chesapeake planters imagined that their financial prospects would be brighter if only they were free to sell their produce to the world market directly instead of through Britain, as the Navigation laws required.<sup>23</sup>

The Tea Act, passed by Parliament in early 1773, also put the colonies back in confrontation with Britain. This legislation aimed to help bail out the financially troubled East India Company by giving it a monopoly on tea sales in the colonies. The British government also sought to undercut smugglers—two-thirds of the tea consumed in America was believed to have been smuggled to avoid paying any duty—by slashing the import duty on tea and allowing the company to transport cargo directly to North America without stopping in Britain. The revenue implications of bringing the smuggled tea into legal channels of trade and taxing it were enormous.<sup>24</sup>

Even though Britain was actually reducing the price of legal tea imports, colonial merchants—many of whom were probably complicit in the illegal smuggling—protested the granting of a monopoly privilege to the East India Company and the payment of duty. They succeeded in riling up other colonists against the British action and, in the fall of 1773, American ports began turning away East India ships loaded with tea. In Boston, several ships landed but were not permitted to unload. At the instigation of local merchants who profited from smuggled tea, crowds gathered near the docks on December 16, 1773. About one hundred fifty people stormed an East India Company ship and dumped 342 chests of tea (about

90,000 pounds) into the harbor. Thus, the famous Boston Tea Party was not a protest about an unfair tax increase, since the duty was actually being reduced, but about a British attempt to make the smuggling of tea unprofitable so that the East India Company could gain control of the trade.<sup>25</sup>

Outraged by these events, British officials passed the Coercive Acts (known as the Intolerable Acts in America) in the spring of 1774. These measures closed the port of Boston until the destroyed tea had been paid for, gave the royal governor direct authority over the local government, and required the colonies to provide housing and provisions for British soldiers. Britain and the thirteen North America colonies were now on a collision course.

The colonies banded together in the First Continental Congress, which convened in September–October 1774. The Congress denied Parliament's jurisdiction over the domestic affairs of the colonies, except as it pertained to the regulation of foreign trade, and pointedly rejected internal taxation without representation. The Congress issued the Declaration of Rights and Grievances, which explained that the colonists "cheerfully consent to the operation of such acts of the British parliament, as are bona fide restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country," but excluded "every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent." Furthermore, the declaration continued, the colonists were "entitled to life, liberty, & property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent."<sup>26</sup>

The colonies essentially wanted a return to Britain's pre-1763 benign neglect with regard to their internal affairs. They also requested the repeal of many laws enacted after 1763, but not the Tea Act, which it accepted as part of the Navigation Acts. The Congress called for the non-importation of all goods from Britain, Ireland, and the British West Indies starting in December 1774 until the Coercive Acts had been repealed. After issuing these demands, the representatives adjourned until May 1775 and awaited the British response.

Britain opted for a military solution. In early 1775, the government declared Massachusetts to be in a state of rebellion and sent its armed forces to occupy Boston, leading to the clashes at Lexington and Concord. In May, Congress decided to augment non-importation with non-exportation: a ban on all exports to Britain and the West Indies starting a year later. The delay in enforcing the export ban was a concession to the South, whose

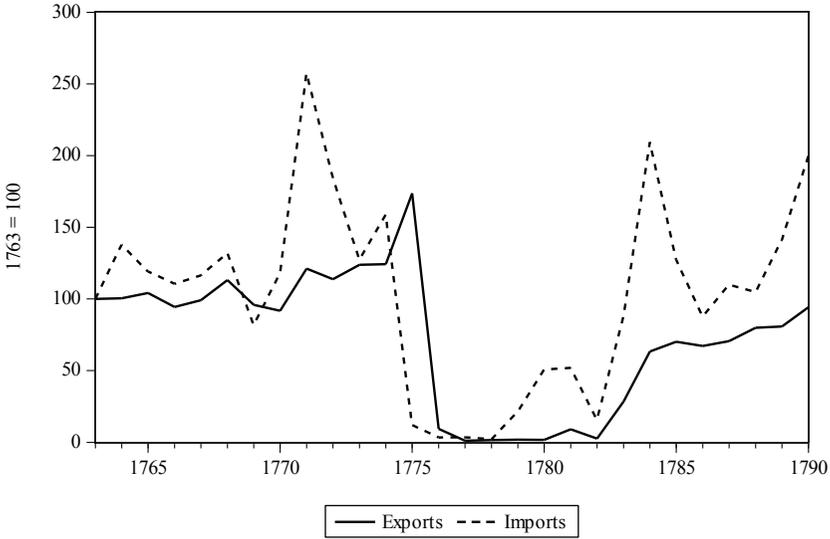


Figure 1.1. Value of exports and imports—American colonies and England and Scotland, 1763–1790. (US Bureau of the Census 1975, series Z-213–14, Z-227–28.)

representative protested that an immediate ban would impose a huge and unfair burden on the planters because crops for sale during the current year had already been planted.

The national embargo on trade with Britain had a much more pronounced effect on commerce than the previous non-importation movement. Imports from Britain simply evaporated in 1775, as figure 1.1 shows. Exports rose in 1775 as American farmers and planters strained to make as many last shipments to Britain as possible, but then disappeared the following year. By this time, fighting had broken out between British and colonial forces in Massachusetts, and the colonies began to move toward independence.

Many of the political pamphlets of this period asserted colonial rights under the English constitution and argued for American sovereignty, but the underlying grievance was also economic in nature. “The commercial dispute preceded the constitutional, not just once but again and again in these years,” Lynd and Waldstreicher (2011, 609) note. “It is important that colonists melded economic and constitutional arguments under the category of sovereignty—but not so important that we should ignore the originating nature of economic forces.”

## TRADE AND INDEPENDENCE

Parliament responded to the American embargo in early 1775 by restricting the trade of the thirteen colonies to Britain alone. The British government raised the stakes later that year by enacting the Prohibitory Act, which banned all trade with the colonies. In retaliation for colonial resistance and in the hopes of ending the rebellion, Britain sought to isolate the American states by completely cutting off their foreign trade. British authorities especially wanted to prevent the colonies from importing military supplies, such as gunpowder, muskets, bayonets, and ammunition, from other countries. The complete stoppage of all foreign commerce caused consternation in Congress. In October 1775, John Adams wrote, "Can our own People bear a total Cessation of Commerce? Will not Such Numbers be thrown out of Employment, and deprived of their Bread, as to make a large discontented Party? Will not the Burthen of supporting these Numbers, be too heavy upon the other Part of the Community? Shall We be able to maintain the War, wholly without Trade? Can We support the Credit of our Currency, without it?"<sup>27</sup>

In early 1776, the Second Continental Congress debated what to do next. On April 6, 1776, in defiance of Britain, Congress declared that the colonies were no longer bound by British mercantile regulations and that American ports were open to trade with all countries except Britain. Whereas Congress asserted in October 1774 that Parliament had no authority over the colonies except for the regulation of its external trade, now it denied even this. Adams believed that the April proclamation was America's true declaration of independence. Now, Adams thought, "the utmost encouragement must be given to trade—and therefore We must levy no Duties at present upon Exports and Imports—nor attempt to confine our Trade to our own Bottoms, or our own seamen."<sup>28</sup>

In July 1776, the Continental Congress formally declared independence from Britain. Among the many grievances cited in the Declaration of Independence, Congress complained about Britain's "cutting off our trade with all parts of the world" and "imposing taxes on us without our consent." By this time, trade between the two countries had completely collapsed. This had less to do with Britain's enforcement of the coastal blockade than its military strategy of controlling the major cities, which were also the major seaports. British military forces occupied Boston (1775–76), New York (1776–83), and Philadelphia (1777–78) along with other key commercial cities at various times during the war. These ports had been America's main gateways to the rest of the world, and this occupation choked off foreign

trade more than the blockade itself. The ports of other coastal towns were simply not equipped to handle large volumes of trade.

The states tried to make up for the lost trade with Britain by promoting commerce with France and other European countries. Congress appointed a committee led by John Adams that came up with the "treaty plan of 1776."<sup>29</sup> Adams and his colleagues drafted a template commercial treaty that the diplomats could use to negotiate with foreign powers. Under the plan, the United States would seek "national treatment" from other nations, meaning that US merchants and ships (if not goods) would receive the same standing in foreign countries as their own domestic merchants and ships. This audacious request was far more demanding than the standard most-favored-nation (MFN) treatment. Under MFN, US goods and ships would be treated the same as the most-favored foreign nation in the country's market. Under MFN, the United States could not be discriminated against compared to other foreign nations, but a country still might tax foreign goods and ships.

The treaty plan bore little fruit and had virtually no effect on trade because of the wartime conditions. Still the first trade agreement the United States concluded was an important one: the Treaty of Amity and Commerce with France in February 1778. Although the treaty did not have a significant impact on bilateral trade during the war, the agreement symbolized the informal alliance between the two nations.<sup>30</sup> Despite British efforts to cut off the trade of the colonies, the French navy helped keep some North Atlantic sea routes open, and shipments of French military supplies aided the American war effort.

The agreement also contained the "conditional" MFN clause. This meant that if either party granted another country better treatment for its goods or vessels, that treatment would not automatically be extended to the other; new concessions would have to be negotiated.<sup>31</sup> Although the conditional MFN requirement came at the request of French negotiators, the United States persisted in using it until adopting an unconditional MFN policy in 1923. Under unconditional MFN, a tariff reduction granted to one country would automatically be extended to other countries with whom it had MFN agreements.

Data on the volume of US trade during the Revolutionary War are scant. The fragmentary statistical evidence suggests that it was a fraction of its prewar levels. Although trade began to recover after 1778, when British troops withdrew from Boston and Philadelphia, it still remained at low levels. The total tonnage of ships passing through Philadelphia in 1780, for example, was just a third of the tonnage in 1770.<sup>32</sup> Commerce with

other countries failed to make up for the loss of trade with Britain, and the Royal Navy made it difficult to get gunpowder and other supplies into the country.

The American economy suffered grievously as a result of the damage caused by the Revolution and the disruption to foreign commerce. "The foreign sector was simply too central to the performance of the entire economy for its disruption to be suffered lightly," McCusker and Menard (1985, 367) note. One indication of the economic damage caused by the Revolution is the sharp decline in real per capita income, nearly as severe as the reduction during the Great Depression of the early 1930s. McCusker (2000, 156) estimates that real per capita income fell 15 percent between 1774 and 1781, whereas Lindert and Williamson (2013, 741) estimate that it fell 20 percent between 1774 and 1800. Since the latter figure takes into account the economic recovery in the 1790s, Lindert and Williamson conclude that "the Revolutionary disaster and the Confederation turmoil could have been America's greatest income slump ever, in percentage terms" (741). Whatever the precise amount, Americans paid a very high economic price to achieve their independence.

Eventually, with some crucial military assistance from France, America won the war for independence at the Battle of Yorktown in October 1781. A provisional peace agreement with Britain was reached late the following year, and Britain legalized trade with the United States in May 1783. Great Britain formally ended the hostilities and recognized the thirteen colonies as free and sovereign states with the Treaty of Paris, signed in September 1783.

After seven years of severely limited international trade, Americans anticipated a great economic revival with the reopening of commerce. Rather naively, they assumed that political independence would not prevent the resumption of close economic ties with Britain and that Britain would allow America to resume its previous commercial position in the British Empire. Early indications supported this assumption: the Earl of Shelburne, the British minister in charge of the peace negotiations and a disciple of Adam Smith, was inclined to be magnanimous with the renegade colonies. An October 1782 draft of the peace treaty included liberal provisions for commercial reciprocity. In negotiating the treaty with Britain, Benjamin Franklin had the audacity to ask for the freedom of American vessels to trade within the British Empire, and it appeared he might succeed. In March 1783, Chancellor of the Exchequer William Pitt introduced a bill in Parliament that would have granted the United States virtually all of its former trade privileges, even allowing American ships to

enter British colonial ports on the same terms as British ships.<sup>33</sup> This liberal approach was also met strong opposition. Shipping interests wanted to preserve their exclusive control of British trade in the West Indies and elsewhere without competition from American ships. Tory nationalists were in no mood to be conciliatory to the rebellious Americans and wanted strict navigation laws to strengthen Britain's maritime security.

America's hopes for regaining its previous commercial access to the British Empire fell apart when the government collapsed and a new coalition, led by Lord North and Charles James Fox, took over in April 1783. The Fox-North ministry was determined to increase Britain's naval strength and was not inclined to grant commercial concessions to the United States. Instead, the Privy Council banned American ships in the British West Indies, a temporary exclusion that was made permanent five years later. In addition, some American goods were banned from the West Indies, while others would face stiff duties that they did not have to face before. Even if the shipping ban and high duties could be partially evaded, they were a heavy blow to New England's economy.

Still, the legalization of Britain's trade with America in May 1783 led to a surge in bilateral trade and a brief economic boom in the United States. Having been deprived of most foreign goods for eight years, American consumers gorged themselves on British products, and imports soared, as figure 1.1 shows. Exports to Britain jumped as well, but only to half of their prewar level. Of course, exports to Britain were expected to be lower after the war because the country's trade was no longer bound by British commercial regulations; hence American goods did not need to be shipped to Britain for reexport elsewhere. Although the United States had won its freedom from the Navigation Acts, it had lost its privileged access to the markets of the British Empire, a loss that was not offset by new export opportunities elsewhere. Although statistical data for the period are scant, the available evidence suggests that, overall, US exports were significantly lower than before the war.<sup>34</sup>

The immediate result was a severe trade deficit. At least with respect to Britain, the United States imported £7.6 million but only exported £2.5 million over the three years 1784–1786.<sup>35</sup> Prior to the revolution, America's trade surplus with the West Indies helped finance trade deficits with Britain. Now, thanks to Britain's restrictive policies, the United States did not have the export earnings from the West Indies to pay for British imports, so it had to make payment in specie. The United States is estimated to have lost £1.26 million in gold and silver over these three years. The outflow of specie produced a sharp deflation: consumer prices

dropped more than 12 percent in 1783, the first year in which trade with Britain was restored, and fell in every subsequent year until 1790. Between 1783 and 1790, domestic prices declined a cumulative 27 percent.<sup>36</sup>

This monetary contraction led to a severe recession starting in 1784 that prolonged the economic distress of the revolutionary war period. Many economic indicators did not return to their prewar levels until the end of the 1780s. New England suffered far more than other regions. The shipbuilding industry was decimated by the ban on carrying goods to the West Indies; Britain also kept in place a ban imposed in 1776 on the purchase or repair of ships in the United States. The fishing and whaling industry suffered from the loss of British markets as well: in 1786, the cod fisheries were operating at just 80 percent of the prewar level.<sup>37</sup>

Southern crop producers also had difficulty recovering from the economic dislocations of the war. Britain confiscated an estimated thirty thousand slaves from Virginia during the war and imposed stiff import duties on tobacco after the war. As a result, Virginia's tobacco production was nearly 20 percent lower in 1783–84 than it had been in 1774. Rice exports, now also subject to high duties in Britain, were in 1783–86 less than half of what they had been in 1770–73.<sup>38</sup>

Although the United States was now free to trade with the rest of the world, commerce with other countries remained limited. Americans hoped that trade with France would pick up the slack from Britain, but it remained disappointingly low. "Americans had been accustomed to British merchants, who shared their culture, offered comparatively high-quality merchandise at bargain prices, and provided them with long-term credit," Buel (1998, 69) observes. "French merchants were ignorant of American customs, offered high-priced but inferior merchandise, and proved reluctant to extend any credit." France's navigation policies also put obstacles in the way of American ships in the French West Indies, while the French tobacco monopoly continued to restrict purchase from Virginia.

The only bright point in the postwar trade situation was a considerable improvement in the terms of trade, partly because exports were no longer hindered by the Navigation Acts. The price of tobacco rose from its prewar level, and the price of non-British imports fell because they no longer had to be shipped through Britain. Unfortunately, this good news was short-lived. After rebounding immediately after the end of the war, the terms of trade slid during the rest of the 1780s. And with the lower volume of trade, the gains from trade were probably a fraction of what they had been prior to the war.

Thus, the American economy was mired in a terrible state throughout

the 1780s. Exports were crippled by the lack of access to markets in the British Empire, and the monetary drain resulted in persistent deflation. As James Madison lamented in 1785, "The Revolution has robbed us of our trade with the West Indies, the only one which yielded us a favorable balance, without opening any other channels to compensate for it. . . . In every point of view, the trade of this country is in a deplorable condition."<sup>39</sup>

### THE COMMERCIAL NEGOTIATIONS OF 1784–86

The solution to the country's faltering economy, it was widely believed, was to persuade Britain to lift the Privy Council's restrictive Orders in Council. That would stimulate America's shipping and export sectors and help close the trade deficit, thereby reducing the drain of specie and ending the deflation of prices. To accomplish this, Americans pinned their hopes on a trade agreement with Britain that would restore the commercial benefits that they previously enjoyed as a part of the British Empire. New England merchants, in particular, pleaded with Congress to address in some way Britain's restrictive policies.

In 1784, with the goal of export expansion in mind, Congress initiated a plan to secure commercial agreements with other countries and open up the blocked paths of American ships and goods in foreign markets. Trade agreements had been concluded with the Netherlands and Sweden in the early 1780s, but Congress aimed to reach accords with the two most important powers, Britain and France, as well as Prussia, Denmark, Tuscany, Portugal, Russia, and others. John Adams, Thomas Jefferson, and John Jay were each given a two-year commission to negotiate such trade agreements. Adams was sent to London and Jefferson to Paris, while Secretary of Foreign Affairs John Jay remained in New York and used diplomatic channels to explore other possible agreements.

In London, Adams tried to persuade British officials that the obstacles they placed on America's trade were counterproductive. He proposed that the nations give each other "national treatment" in terms of shipping in their ports. He quickly discovered that the British were completely uninterested in any serious negotiations. Their officials had been influenced by Lord Sheffield's *Observations on the Commerce of the American States with Europe and the West Indies*, a 1783 pamphlet which made a strong case that the country should keep its restrictions on American commerce in place. Sheffield shrewdly observed that the new American Congress could not regulate the trade of the states, and therefore it was powerless to retaliate against Britain. Furthermore, he argued, Britain should have

little interest in a commercial agreement, because it would maintain its access to the US market without any discrimination even in the absence of a treaty. Therefore, Britain could protect its own commercial interests and make no concession at all with the assurance that it would suffer no reprisals from the United States.

Sheffield's pamphlet caused a sensation on both sides of the Atlantic because it correctly identified a key weakness in the American system of government. The Articles of Confederation, drafted in 1777 and implemented in 1781, set out the legal framework for the national government and severely limited its powers. Under the Articles, the United States was essentially a league of thirteen independent states rather than a single unified nation. As article 2 stated, "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled." Because so few powers were expressly delegated to Congress, political authority was highly decentralized: the states were sovereign, and the national government was extremely weak.

Furthermore, article 9 of the Articles of Confederation explicitly stated that "no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever." Thus, the government lacked any capacity to respond to British commercial regulations. There could be no national trade policy because there were thirteen state trade policies.

Adams wrote that "the United States are willing to throw wide open every port in their dominions to British ships and merchants and merchandise, and I am ready, in their behalf to pledge their faith in a treaty to this effect, upon the reciprocal stipulation of this nation, that her ports will be equally open to our ships, merchants, and products."<sup>40</sup> When asked by British diplomats what the United States could offer in exchange for better commercial treatment, he could make no reply. As a result, British officials ignored his offer. Adams bristled at the lack of diplomatic respect shown for him and his country, but Sheffield was right: the United States had a very weak bargaining position, because it already had an open market, and the government had no ability to close it. The British government's position was simple: having chosen to be independent, the United States was not entitled to enjoy the privileges of colonial status and therefore it gave up any inherent right to trade within the British Empire.

Recognizing the futility of his mission, Adams fired dispatch after dis-

patch to Congress explaining that the threat of retaliation was the only way to persuade Britain to reach a commercial agreement. Adams insisted that action be taken:

Patience, under all the unequal burthens they impose upon our commerce, will do us no good; it will contribute in no degree to preserve the peace with this country. On the contrary, nothing but retaliations, reciprocal prohibitions, and imposts, and putting ourselves in a posture of defense, will have any effect. . . . Confining our exports to our own ships, and laying on heavy duties upon all foreign luxuries, and encouraging our own manufactures, appear to me to be our only resource, although I am very sensible to the many difficulties on the way.<sup>41</sup>

Such retaliation, of course, could only take place if the states acted in concert with one another. That in turn could be achieved only if the states granted Congress the power to regulate the nation's commerce. Adams sent Congress a copy of Sheffield's pamphlet and lamented its influence: "A system which has in it so little respect for us and is so obviously calculated to give a blow to our nurseries of ships and seamen, could never have been adopted but from the opinion that we had no common legislature for the government of commerce."<sup>42</sup>

Adams' frustration grew over time. The United States was offering open trade on liberal terms, but Britain and France remained committed to retaining their exclusive privileges in the colonial trade. In 1785, Adams wrote: "The United States of America have done more than all the economists of France toward propagating in the world this magnanimous sentiment" of liberty of commerce, but "that liberty is not universally and reciprocally admitted." A prolific correspondent, Adams warned his colleagues back home of his difficult negotiating situation and argued that it was time to get tough: "We have hitherto been the bubbles of our own philosophical and equitable liberality; and, instead of meeting correspondent sentiments, both France and England have shown a constant disposition to take a selfish and partial advantage of us because of them, nay, to turn them to the diminution or destruction of our own means of trade and strength. I hope we shall be the dupes no longer than we must. I would venture upon monopolies and exclusions, if they were found to be the only arms of defence against monopolies and exclusions."<sup>43</sup>

Jefferson had an equally difficult time negotiating with the French government in seeking to open the French West Indies to American ships and goods. Jefferson found little interest among the French in changing

their policy or in persuading the national tobacco monopoly to purchase more from the United States and help his home state of Virginia. Similarly, John Jay had little success in convincing other European countries to enter into friendly commercial arrangements. Writing to Jefferson, Adams said, "We must not, my Friend, be the Bubbles of our own Liberal Sentiments. If We cannot obtain reciprocal Liberality, We must adopt reciprocal Prohibitions, Exclusions, Monopolies, and Imposts—our offers have been fair—more than fair. If they are rejected, We must not be the Dupes."<sup>44</sup>

Adams and Jefferson exchanged many letters discussing the situation and proposing ways around the Articles of Confederation. Yet even if the diplomats had had a credible threat of reprisals, they still might not have been able to negotiate satisfactory commercial agreements. The United States was demanding much more than improved bilateral trade: it wanted access to the indirect trade of the European powers with their overseas colonies, mainly in the West Indies, and direct access for American ships and goods in the home country as well. The United States was essentially asking the European powers to end mercantilism and put all trade on an open, non-discriminatory basis. Of course, Britain and nearly every other European country wanted to keep a monopoly on its colonial trade. The United States was an outsider, a non-colonial power that was demanding entry into an exclusive colonial trade network. The new nation was simply asking for too much and had too little to offer in return. "The really important fact is that the United States was demanding special consideration, privileges such as no European country had ever granted to another," Setser (1937, 74) notes. Foreign governments "refused to alter their established policies at the demand of a new nation which had little to offer in return."

The two-year diplomatic commissions expired in May 1786 without any success. The prospects for restoring economic prosperity through trade expansion had dimmed considerably.

### FLOUNDERING UNDER THE ARTICLES OF CONFEDERATION

The problem with the Articles of Confederation was not simply that Congress did not have powers over trade policy that would give government officials the credibility to negotiate treaties of commerce with other countries. Since Congress was not permitted to impose import duties, the national government could not raise revenue to fund its operations, finance the national debt, or pay for national defense. These closely intertwined

problems had long been recognized. In 1782, Alexander Hamilton wrote that "the vesting of Congress with the power of regulating trade ought to have been a principal object of the Confederation for a variety of reasons," adding that "it is as necessary for the purposes of commerce as of revenue."<sup>45</sup>

The inability to raise any revenue left Congress entirely dependent on the requisitions of funds from the states. Even here, it lacked the ability to compel the states to pay, and they proved increasingly reluctant to respond to Congress's funding requests. In October 1781, just after the victory at Yorktown, Congress requested \$8 million from the states for 1782. By January 1783, Congress had received only \$420,000 of that amount. By March 1787, states had paid two-thirds of the October 1781 and April 1784 requisitions, one-fifth of the September 1785 requisition, and just 2 percent of the August 1786 requisition.<sup>46</sup> "By the end of 1786, Congress literally was receiving no money from the states for current federal needs and expenses," Brown (1993, 25) notes.

Furthermore, without a reliable source of revenue, Congress could not borrow on credit markets. An attempt to float a loan in October 1786 failed without having attracted a single subscriber. As James Madison concluded, "Experience has sufficiently demonstrated that a punctual and unfailing compliance by 13 separate and independent Governments with periodical demands of money from Congress, can never be reckoned upon with the certainty requisite to satisfy our present creditors, or to tempt others to become our creditors in future."<sup>47</sup>

The consequences were dire. The national government was essentially broke and without credit. Not only did Congress lack the funds to pay the interest on the government's domestic and foreign debts, but it even considered disbanding because it could not pay its own members, officers, and staff. Congress could not finance an army to address the country's new foreign-policy challenges, such as the continued British occupation of western forts in violation of the Treaty of Paris. Writing in 1787, Madison observed that

the present System neither has nor deserves advocates; and if some very strong props are not applied will quickly tumble to the ground. No money is paid into the public Treasury; no respect is paid to the federal authority. Not a single State complies with the requisitions, several pass over them in silence, and some positively reject them. The payments ever since the peace have been decreasing, and of late fall short even of the pittance necessary for the Civil list of the Confed-

eracy. It is not possible that a Government can last long under these circumstances.<sup>48</sup>

In terms of taxing imports, there was no national trade policy, but rather thirteen state trade policies. Eleven of the thirteen colonies enacted their own tariff laws during the 1780s. (New Jersey and Delaware, the only two states that did not pass tariff legislation, lacked the large seaports of their neighbors and wanted to provide every encouragement to trade that they could.) Most of these state tariffs were relatively low, about 5 percent, and the structure of duties was quite similar.<sup>49</sup> They were mainly designed to raise revenue, although some duties imposed by Massachusetts and Pennsylvania aimed to protect domestic manufactures.

This decentralized system had problems, but trade wars between the states were not among them. With rare exceptions, most of the products of one state were given duty-free treatment in the others. States also did not usually discriminate against the shipping of other states. The main problem was not trade relations between the states, but rather trade relations between the United States and the rest of the world.<sup>50</sup>

Attempts to modify the Articles of Confederation and remedy these two shortcomings failed repeatedly during the 1780s. In February 1781, Congress requested that the states amend the Articles and empower it to levy an import duty of 5 percent. The tariff's proceeds would be devoted exclusively to paying the interest and principal on the national debt, with nothing devoted to the operating expenses of the national government, and the duties would be abolished when the debt had been retired. This modest proposal addressed the fear that an excessively powerful central government would threaten state sovereignty. However, amendments to the Articles required the unanimous consent of the states. At first, enactment of the measure looked promising: it was approved by eleven states within a year, but then the proposal stalled in the Rhode Island legislature. In November 1782, the Rhode Island legislature unanimously rejected the proposal, choosing to finance its own expenditures with its own import duties rather than ceding that power to the national government and having to impose direct taxes instead. Shortly thereafter, Virginia repealed its previous ratification of the amendment.

Madison proposed a similar revenue plan in early 1783 that called for a twenty-five-year authorization for Congress to impose specific duties on enumerated items and a 5 percent duty on all other imports. Congress approved the measure in April 1784, but once again the unanimous approval of the states proved to be out of reach. Rhode Island agreed to it this time,

but Connecticut rejected it twice until finally accepting it in early 1784. By July 1786, every state had approved the proposal except for New York. The state had rejected the revenue plan in 1785, after upstate agricultural interests realized that their taxes would increase if the state gave up its claim on the import duties collected in New York City. Then New York passed it in 1786 with the requirement that it administer the import duties, determine how much would be given to the national government, and be able to make payments to Congress in New York currency. Congress found these conditions unacceptable because it needed gold and silver coin to repay foreign creditors, thus leaving the matter unresolved.

Aside from revenue, another problem with having thirteen state trade policies was the inability to formulate a credible national response to Britain's discrimination against American commerce. As we have seen, the attempts to negotiate commercial agreements had failed. Some states tried to retaliate against the Orders in Council that blocked US trade with the British West Indies. For example, in 1785, in response to the Orders, Massachusetts prohibited British ships from loading American goods in its ports. But when Connecticut refused to follow this example, British ships merely shifted their destination from Boston to New Haven, and Massachusetts was forced to suspend its action a year later.<sup>51</sup> Indeed, the neighboring states of New York and New Jersey, as well as Pennsylvania and Delaware, could not enact anti-British shipping legislation unilaterally without simply deflecting trade to their neighbor. Some states were persistent: in 1787, New York put duties on imported goods coming from Connecticut and New Jersey to punish them for not levying additional duties on British goods or tonnage. That effort failed, and the duties were soon abolished, because no other state cared to join New York's effort: smaller states tended to free ride off of the retaliatory actions of larger states and thus undermine any attempted reprisal. The British easily evaded the differing state-by-state policies on navigation by simply landing at the most welcoming ports.

The national government had no power to solve this collective-action problem, and British authorities recognized this. As a British magazine reported, "By the latest letters from the American States, the restraint laid upon their trade with the British West Indies has thrown them into the utmost perplexity; and by way of retaliation they are passing laws inimical to their own interest; and what is still worse, inconsistent with each other. . . . Hence the dissensions that universally prevail throughout what may be called the thirteen Dis-United States." Speaking before Parliament in 1787, Lord Grenville defended the government's policy, noting with re-

spect to the United States that "we do not know whether they are under one head, directed by many, or whether they have any head at all."<sup>52</sup> Many in Britain believed that the United States would simply collapse as a nation and break up into its constituent parts.

The nation's political leaders increasingly worried that foreign countries would not take the United States seriously if they remained thirteen independent states. Jefferson believed that, as long as the regulation of commerce remained "in the hands of thirteen Legislatures, they [Britain] need not fear a union in their proceedings."<sup>53</sup> Madison concurred: "If it be necessary to regulate trade at all, it surely is necessary to lodge the power, where trade can be regulated with effect, and experience has confirmed what reason foresaw, that it can never be so regulated by the States acting in their separate capacities."<sup>54</sup>

With the failure of Adams and Jefferson to secure commercial treaties, Congress considered measures to establish a national trade policy. In December 1784, Congress appointed a committee to amend article 9 of the Articles of Confederation and give it "the powers to regulate the commercial intercourse of the States with other powers." Led by James Monroe, the committee recommended in early 1785 that Congress have the "sole and exclusive" authority of "regulating the trade of the States, as well with foreign nations, as with each other, and of laying such imposts and duties upon imports and exports as might be necessary for the purpose."<sup>55</sup>

But Congress failed to act. By June 1785, Monroe reported to Jefferson that nothing had been done with the committee's report: "The importance of the subject and the deep and radical change it will create in the bond of the union, together with the conviction that something must be done, seems to create an aversion or rather a fear of acting on it. . . . Some gentleman have inveterate prejudices against all attempts to increase the powers of Congress; others see the necessity but fear the consequences."<sup>56</sup>

The inaction was due to sectional dissension on the matter. While New England was desperate to give Congress the power to deal with the trade situation, and the Mid-Atlantic states were in general agreement, the South was reluctant to move forward. The South was less adversely affected by British shipping regulations in the West Indies and still had close ties to Britain for the sale of tobacco and other crops. It was wary of granting more extensive powers to the national government, fearing that they would be used to exclude British shipping, reduce competition for transportation services, and put exporters and importers at the mercy of New England merchants. Richard Henry Lee, a Virginian who served as president of Congress, feared that giving Congress the power to regulate

commerce would create "a monopoly of the carrying business . . . in favor of the northern states."<sup>57</sup> He and others dreaded the "intrigue and coalition" of the New England states, which "might fix a ruinous monopoly upon the trade & productions of the [southern] Staple States."<sup>58</sup> This would reduce competition for shipping services, leading to higher transportation costs and lower prices for staples. Although Madison, Monroe, and Jefferson were prominent Virginians who wanted to give Congress greater authority over commerce, their views were not shared by many in the state.

New England merchants and politicians were dismayed by the South's unwillingness to act. New England was the region most affected by the British restrictions on the West India trade and believed the South was refusing to consider the national interest or acknowledge the economic distress in other parts of the country. They wanted to give some preferences for American shipping, such as a tax on goods coming or going on British vessels, to strengthen the American shipbuilding and shipping industries, but they recognized that the South disagreed: "They may get their goods to market cheaper if our ships have nothing to do," one New England politician complained.<sup>59</sup> Boston merchants demanded that Congress act and tried to organize a boycott of British goods. The failure of this effort led to a growing frustration over the South's intransigence, and even talk of secession if the South would not allow the situation to be remedied.

In August 1785, when Madison heard reports that New England states might break away and form a subconfederation if the South continued to block commercial reforms, he reported to Jefferson as follows:

The machinations of G.B. [Great Britain] with regard to Commerce have produced much distress and noise in the Northern States, particularly in Boston, from whence the alarm has spread to New York and Philada. . . . the sufferers are every where calling for such augmentation of the power of Congress as may effect relief. . . . If any thing should reconcile Virga. to the idea of giving Congress a power over her trade, it will be that this power is likely to annoy G.B. against whom the animosities of our Citizens are still strong. They seem to have less sensibility to their commercial interests; which they very little understand, and which the mercantile class here have not the same motives if they had the same capacity to lay open to the public, as that class have in the States North of us. The [high] price of our Staple since the peace is another cause of inattention in the planters to the dark side of our commercial affairs. Should these or any other causes prevail in frustrating the scheme of the Eastern and Middle States of a general

retaliation on G.B., I tremble for the event. A majority of the States deprived of a regular remedy for the distresses by the want of a federal spirit in the minority must feel the strongest motives to some irregular experiments. The danger of such a crisis makes me surmise that the policy of Great Britain results as much from the hope of effecting a breach in our confederacy as of monopolising our trade.<sup>60</sup>

Madison argued that the Articles had to be amended lest dissention over the issue threaten the union itself:

I conceive it to be of great importance that the defects of the federal system should be amended, not only because such amendments will make it better answer the purpose for which it was instituted, but because I apprehend danger to its very existence from a continuance of defects which expose a part if not the whole of the empire to severe distress. The suffering part, even when the minor part, cannot long respect a Government which is too feeble to protect their interest; but when the suffering part come to be the majority part, and the despair of seeing a protecting energy given to the General Government, from what motives is their allegiance to be any longer expected? Should G. B. persist in the machinations which distress us; and seven or eight of the States be hindered by the others from obtaining relief by federal means, I own, I tremble at the anti-federal expedience into which the former may be tempted.<sup>61</sup>

At first, some advocates of a stronger national government believed that Britain's uncompromising attitude on its commercial restrictions could be a blessing in disguise if it aroused patriotic sentiments and promoted domestic political change. Gouverneur Morris thought that Britain's intransigence would do "more political good than commercial mischief" by stoking American resentment and thereby fostering demands to reform the Articles.<sup>62</sup> Merchants, farmers, shipbuilders, fishermen—nearly everyone who suffered from the struggling economy—advocated giving Congress powers over foreign commerce. But this alternative theory was proving wrong; as the decade progressed, states became more self-interested and less unified, more sectional and less national in their thinking.

One example of the sectional divide came when an envoy from Spain promised a commercial treaty if the United States relinquished its rights to navigate the Mississippi River. (Spain had closed the Mississippi to American commerce in 1784.) New England and Mid-Atlantic states were

happy to give up these rights to obtain better access to the markets of Spain and its colonies. The South was appalled that its claim to use the Mississippi might be bargained away and attacked the North for ignoring the river's commercial importance to the region. But the South was outvoted in Congress by seven to five, and John Jay's negotiating instructions allowed him to give up US interests in the Mississippi River for not more than twenty years. Southern leaders were horrified by this decision, although no such agreement was concluded.

By the mid-1780s, there was a growing consensus among political leaders that the system of government under the Articles of Confederation was unworkable. The government's dysfunction in the face of a floundering economy was creating strong sectional tensions that threatened the union itself. As Madison wrote to Jefferson, "Most of our political evils may be traced to our commercial ones."<sup>63</sup> Congress's inability to raise revenue through import duties or to regulate foreign commerce were among the primary considerations that led to the movement to revise the Articles of Confederation and strengthen the national government. The Virginia legislature called for state representatives to meet in Annapolis in September 1786 to consider solutions to the country's commercial problems. Ironically, Madison opposed the convention on the grounds that it was "liable to objection and will probably miscarry," but he was willing to give it a try. "Yet I despair so much of its accomplishment at the present crisis that I do not extend my views much beyond a Commercial Reform," he wrote. "To speak the truth, I almost despair even of this."<sup>64</sup>

Madison's pessimism about the prospects for such a meeting seemed justified because the sectional forces that divided Congress would also be present in any meeting of state representatives. While the idea of such a meeting had been floating around for some time, it was also met with great suspicion by those concerned about state sovereignty. As it happened, the Annapolis Convention was poorly attended and was not in a position to propose giving new commercial powers to the national government. Instead, the Annapolis delegates called for another convention that would discuss not just commerce but the entire structure of the federal system. This set the stage for the Constitutional Convention in Philadelphia in May 1787.

### FOREIGN COMMERCE AND THE CONSTITUTION OF 1787

The country's dismal experience under the Articles of Confederation gave political leaders a compelling economic and foreign-policy rationale for

creating a stronger national government. Indeed, the desire to give Congress the power to collect revenue so that it could pay debts and provide for the national defense, as well as regulate foreign commerce so that it could credibly negotiate with other nations over navigation rights and market access, was a major factor behind the movement to hold the constitutional convention. As Madison recalled much later in life, "It was well known that the incapacity [of the States to regulate foreign commerce separately] gave a primary and powerful impulse to the transfer of the power to a common authority capable of exercising it with effect. . . . In expounding the Constitution and deducing the intention of its framers, it should never be forgotten, that the great object of the Convention was to provide, by a new Constitution, a remedy for the defects of the existing one; that among these defects was that of a power to regulate foreign commerce."<sup>65</sup>

From May to September 1787, representatives from the thirteen states met in closed sessions in Philadelphia to draft a new constitution. "The whole community is big with expectation," Madison wrote as the convention began. "And there can be no doubt that the result will in some way or other have a powerful effect on our destiny."<sup>66</sup> The convention began with a critical decision that greatly facilitated the proceedings: the provisions of the proposed constitution would be approved by majority voting by state. Had unanimity been required, the convention would likely have been deadlocked.<sup>67</sup>

The delegates had no difficulty in agreeing to give Congress the power to impose import duties. Article I, section 8, clause 1 of the new Constitution contained the key provision relating to trade policy: "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States." This uncontroversial passage was adopted without significant debate or apparent dissent. Few could disagree with John Rutledge's observation that "taxes on imports [were] the only sure source of revenue" for the government. Everyone expected, as Gouverneur Morris noted, that revenue would be drawn "as much as possible from trade."<sup>68</sup> A more controversial provision made these powers the exclusive prerogative of Congress, not the states. According to article I, section 10, clause 2: "No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." This provision passed by the narrow margin of 6–5.<sup>69</sup>

The proposal to grant Congress the general power to regulate foreign

commerce—meaning regulations other than import duties, such as shipping policy—was highly contested. This proposal became bound up with the slave trade and formed part of the “dirty compromise” that played out over a few days in late August.<sup>70</sup> The shipping states of New England desperately wanted to give the federal government the authority to regulate commerce so that preferences for American ships in US ports could be enacted. In their view, such preferences, through differential tonnage duties, would not only promote the merchant marine, but would put the government in a better position to negotiate the elimination of foreign regulations that blocked the access of US exporters in foreign markets. Speaking for his state, Nathaniel Gorham of Massachusetts argued that “the eastern states had no motive to union but a commercial one.”<sup>71</sup>

As we have seen, southern states feared giving Congress the power to regulate commerce. With their economy dependent upon large exports of agricultural staples, they wanted unfettered competition to ensure inexpensive shipping services. If British ships were handicapped by extra tonnage duties in US ports, the South believed that it would be exploited by New England shipping interests and charged exorbitant freight rates that would reduce its exports. As Richard Henry Lee wrote to Madison, “It seems clearly beyond a doubt to me that giving the Congress the power to legislate over the trade of the union would be dangerous in the extreme to the five Southern or staple States whose want of ships & seamen would expose their freightage & their produce to a most pernicious and destructive monopoly.”<sup>72</sup> If it could not deny Congress the power to regulate commerce, the South wanted a super-majority (two-thirds) vote to enact such regulations so that it could potentially block such legislation.

How could the opposing views of the North and South be reconciled? The essence of the “dirty compromise,” as Finkelman (1987, 214) observes, was that “the South Carolina delegation would support the commerce clause if New England would support protection for the slave trade and a prohibition on export taxes.” This inter-regional bargain allowed the convention to get around these vexing issues, but each element of the compromise was controversial.

First, the South demanded a ban on export taxes to protect the interests of the staple-exporting states. A constitutional ban on export taxes was a bitter pill for most northern delegates, who felt that Congress should have the authority to tax exports as well as imports. Gouverneur Morris of Pennsylvania argued that “local considerations ought not to impede the general interest” and questioned whether “it would not in some cases be equitable to tax imports without taxing exports; and that taxes on ex-

ports would be often the most easy and proper of the two." Alone among the southerners at the convention, James Madison and George Washington also opposed the ban on export taxes. Madison thought that such taxes "might with particular advantage be exercised with regard to articles in which America was not rivalled in foreign markets," such as tobacco, and speculated that the burden of such a tax would be paid by foreign consumers.<sup>73</sup>

But most southern delegates strongly opposed giving Congress the authority to tax exports. Once again, the South believed that Congress could not be trusted with such power, fearing that it would be used as an instrument of oppression by the North to destroy its staple exports of tobacco, indigo, and rice. George Mason of Virginia "hoped the Northern states could not deny the Southern this security" against having the products of his region singled out for taxation. Mason argued that taxes on exports and imports were different because consumption of the nation's imports was equally distributed across the states, whereas production of the nation's exports was highly concentrated in just a few states. A delegate from South Carolina "was strenuously opposed to a [taxing] power over exports; as unjust and alarming to the staple States." Another thought that export taxes would be "partial and unjust" because they would mainly hit southern staples and would therefore "engender incurable jealousies."<sup>74</sup>

As a compromise, Madison proposed that export taxes be implemented only with the approval of a two-thirds majority of each chamber of Congress. This motion was defeated by a 6-5 vote, with all southern states voting against. The complete ban on export taxes then passed by a vote of 7-4, with the South voting as a bloc in favor (Maryland, Virginia, North Carolina, South Carolina, and Georgia, joined by Massachusetts and Connecticut), with New Hampshire, New Jersey, Pennsylvania, and Delaware opposed. As a result, article I, section 9, of the Constitution states that "no tax or duty shall be laid on articles exported from any state."

The next issue, whether the slave trade should be allowed to continue or should be taxed or banned, was the subject of an even more fractious debate. Although northern shipping interests profited from the traffic in slaves, most delegates from the North abhorred the slave trade. They viewed slavery as morally repugnant and sought to end the trade, particularly as the three-fifths clause gave the South the ability to increase its seats in the House of Representatives by expanding its slave population. The South was divided: Maryland and Virginia already prohibited the importation of slaves because slave owners there wanted to preserve the high value of their current holdings, whereas South Carolina and Georgia

wanted to continue importing slaves to help expand agricultural production. For these two states, a constitutional ban on the slave trade was a deal breaker. Charles Pinckney of South Carolina reported "his firm opinion" that if the constitution outlawed the slave trade, then even if he and "all his colleagues were to sign the Constitution & use their personal influence, it would be of no avail toward obtaining the assent of their constituents. S. Carolina & Georgia cannot do without slaves. . . . [He] should consider a rejection of the clause [protecting the slave trade] as an exclusion of S. Carol. from the union."<sup>75</sup>

To break this impasse, Gouverneur Morris suggested that "the whole subject be committed [to a special committee] including the clauses relating to taxes on exports & to a navigation act," in the hope that "these things may form a bargain among the Northern & Southern States." Oliver Ellsworth of Connecticut agreed, stating that "this widening of opinion has a threatening aspect. If we do not agree on this middle & moderate ground he was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes and directions, and most probably into several confederations and not without bloodshed."<sup>76</sup> The Committee of Eleven, as the select committee was called, soon reported a compromise whereby Congress could only impose a modest fee on imported slaves and would be forbidden from prohibiting the slave trade until the year 1800. Madison criticized the slave trade provision as "dishonorable to the national character," but after changing the date to 1808, twenty years after the Constitution would be ratified, the provision was adopted by a 7–4 vote. The affirmative votes coming from three New England states, Maryland, and three Deep South states.

The final element of the "dirty compromise" was the commerce clause. The Committee of Eleven proposed dropping any requirement of a supermajority to approve regulations of trade. Delegates from the North insisted upon a simple majority rule to enact such regulations. George Clymer from Pennsylvania argued that the "Northern & middle States will be ruined, if not enabled to defend themselves against foreign regulations." Nathaniel Gorham from Massachusetts asked, "If the Government is to be so fettered as to be unable to relieve the [commercial distress of the] Eastern States what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves?"<sup>77</sup> Madison also supported a majority vote so that the country could more easily retaliate against foreign commercial restrictions, but most southern delegates were strongly opposed. They insisted that the commerce clause should be exercised by a super-majority vote of two-thirds.

This dispute threatened the dirty compromise. To preserve it, Charles Pinckney from South Carolina announced that “it was the true interest of the S. States to have no regulation of commerce; but considering the loss brought on the commerce of the Eastern States by the revolution, their liberal conduct towards the views of South Carolina, and the interest the weak Southn. States had in being united with the strong Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations; and that his constituents though prejudiced against the Eastern States, would be reconciled to this liberality.”<sup>78</sup> Therefore, Pinckney and the South Carolina delegation decided to support a simple majority rule as proposed by the Committee of Eleven. According to Madison’s notes, the “liberal conduct” that Pinckney referred to was “the permission to import slaves.” As Madison explained, “An understanding on the two subjects of *navigation* and *slavery*, had taken place between those parts of the Union, which explains the vote on the Motion depending, as well as the language of Genl. Pinckney and others.” In essence, some New England states supported delaying the prohibition on the slave trade in exchange for South Carolina’s support for giving Congress the power to regulate commerce.<sup>79</sup>

As a result, the motion to require a two-thirds majority in Congress to pass regulations of commerce was defeated by a vote of 7–4, with South Carolina alone among southern states in voting against it. The commerce clause was then adopted without recorded opposition. According to clause 3 of article 1, section 8 of the Constitution, Congress was given the specific power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

The last trade-related provision of the Constitution was the requirement that all treaties with foreign countries have the approval of two-thirds of the Senate (article 2, section 2, clause 2). This created a large political obstacle to any commercial agreement that might affect import duties. The explanation for this provision relates to the South’s desire for a two-thirds vote on regulations of commerce and, in particular, the recent memory that the northern states had considered bargaining away the rights to navigate the Mississippi River, something deeply prejudicial to southern interests.<sup>80</sup> In essence, a two-thirds majority was included to protect regional interests in any treaty that the president might reach.

The convention adjourned in September 1787 and sent the proposed Constitution to the states for ratification. Alexander Hamilton, James Madison, and John Jay collaborated on a series of newspaper articles, later collected as *The Federalist Papers*, to persuade the people of New York to

support the Constitution. Several of the essays discussed the advantages of the proposed Constitution from the standpoint of revenue and the regulation of trade. In *Federalist 11*, Hamilton emphasized the bargaining advantages of giving the federal government powers over commerce:

By prohibitory regulations, extending, at the same time, throughout the States, we may oblige foreign countries to bid against each other, for the privileges of our markets. . . . Suppose, for instance, we had a government in America, capable of excluding Great Britain (with whom we have at present no treaty of commerce) from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negotiate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom?<sup>81</sup>

Hamilton held out the hope that American navigation laws would “produce a relaxation in [Britain’s] system” and enable the United States to engage in commerce with the West Indies once again.

In June 1788, New Hampshire became the ninth state to ratify the Constitution, thereby bringing it into effect. By the fall, plans for the transition to the new government were being put in place. George Washington was elected president and launched the new government after taking the oath of office in New York on April 30, 1789. The new Congress sat on March 1789 and almost immediately began considering a law that would impose a tariff on imports. A new era in US trade policy had begun.