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SENATE

{ REPORT
No. 1913

EFFECTUATING THE ORIGINAL INTENT OF CONGRESS WITH
RESPECT TO THE DUTY TO BE IMPOSED ON IMPORTED PILE
MATS AND FLOOR COVERING WHOLLY OR IN CHIEF VALUE OF
COCOA FIBER

JUNE 21, 1940.—Ordered to be printed

Mr. WALSH, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H. R. 6328]

The Committee on Finance, to whom was referred the bill (H. R. 6328) to amend the Tariff Act of 1930, as amended by section 34 (c) of the Customs Administrative Act of 1938 (U. S. C., 1934 ed., Supp. IV, title 19, sec. 1001, par. 1529 (a)), having had the same under consideration, report it favorably without amendment and recommend that the bill do pass.

The purpose of the bill is fully explained in the report of the House Committee on Ways and Means, which is attached hereto and made a part of this report.

[H. Rept. No. 2637, 76th Cong., 3d sess.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6328) to amend the Tariff Act of 1930, as amended by section 34 (c) of the Customs Administrative Act of 1938 (U. S. C., 1934 ed., Supp. IV, title 19, sec. 1001, par. 1529 (a)), having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

GENERAL STATEMENT

This bill is designed to relieve a situation resulting from a decision of the United States Court of Customs and Patent Appeals in *United States v. C. I. Penn* (C. A. D. 93, decided on Jan. 4, 1940), under which cocoa-fiber pile mats in part of braid were held dutiable, under paragraph 1529 (a) of the Tariff Act of 1930 rather than under paragraph 1022 of that act.

Cocoa-fiber mats have been provided for *eo nomine* in each tariff act beginning with the act of 1890. The rates of duty varied from 8 cents per square foot in the act of 1890 down to 3 cents per square foot in the act of 1913, then up to 8 cents per square foot in the act of 1930, the 8-cent rate last mentioned having been increased to 12 cents per square foot effective January 13, 1933, under the provisions of section 336 of the Tariff Act of 1930. In recent years the ad valorem equivalent of the 12-cent-per-square-foot duty has ranged from 141 percent in 1937 to 169 percent in 1934. Under the provisions of paragraph 1529 (a) the duty is 90 percent ad valorem.

Practically all cocoa-fiber pile mats are made with a braided cocoa fiber binding on both sides and ends. It is understood that they have long been manufactured in this manner and that imports so made were regularly assessed at the rates of duty provided for under the tariff acts aforementioned. However, the Court in the *Penn case* cited decided that they were articles in part of braid and were dutiable under the classification for articles in part of braid rather than as cocoa-fiber mats. The Court found that the articles were in fact in part of braid and in the course of its opinion declared:

"The conclusion follows from the foregoing that there can be no doubt respecting the construction of the provision of paragraph 1529 (a) respecting the phrase 'by whatever name known, and to whatever use applied, and whether or not named, described, or provided for elsewhere in this Act;' that by its terms the paragraph invades paragraph 1022 and removes therefrom cocoa fiber mats made in part of braid, and therefore the doctrine of long-continued administrative practice in classifying merchandise is not here applicable."

The provisions of this bill will simply include articles described in paragraph 1022 in the exceptions to the provisions of paragraph 1529 (a). Although the bill would in effect exclude any and all articles provided for in paragraph 1022, in practical application cocoa-fiber pile mats and floor coverings are the only articles which would, at present, be so excluded. The passage of this bill would simply restore to cocoa-fiber pile mats the duty in effect prior to the decision of the Court of Customs and Patent Appeals in January 1940. The bill has been referred to the Treasury Department, the Department of State, and the Tariff Commission, none of whom offer any objection to the enactment of this legislation. The reports of the Departments will be found below.

TREASURY DEPARTMENT,
Washington, D. C., July 6, 1939.

Hon. ROBERT L. DOUGHTON,

Chairman, Committee on Ways and Means, House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to H. R. 6328, a bill to amend paragraph 1529 (a) of the Tariff Act of 1930, as amended by section 34 (c) of the Customs Administrative Act of 1938 (U. S. C., Supp. IV, title 19, sec. 1001, par. 1529 (a)), by inserting "1022" after the figure "1006", the amendment to take effect on the date following its enactment.

Paragraph 1022 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 1022) provided for the assessment of duty at the rate of 8 cents per square foot on imported pile mats and floor coverings, wholly or in chief value of cocoa fiber. This rate was changed to 12 cents per square foot by a proclamation of the President, effective January 13, 1933, issued under the provisions of section 336 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1336). The same paragraph provides the rate of 10 cents per square yard for matting and articles made therefrom, wholly or in chief value of cocoa fiber or rattan.

There is enclosed for ready reference a copy of paragraph 1529 of the Tariff Act of 1930, as amended by the Customs Administrative Act of 1938. It will be noted that this paragraph imposes duty at the rate of 90 percent ad valorem on articles wholly or in part of certain classes of braids and that it is specifically provided that, with certain exceptions, such rates shall apply to articles of the character described, by whatever name known, and to whatever use applied, and whether or not named, described, or provided for elsewhere in the Tariff Act.

The United States Customs Court in a decision published as (1939) C. D. 146, a copy of which is enclosed, has held that certain mats of cocoa fiber, with a pile surface, and bound around the edges with a braided material of coir yarn, which yarn is made of cocoa fiber, are dutiable as articles in part of braid at the rate of 90 percent ad valorem under paragraph 1529 (a) of the tariff act, rather than at the rate of 12 cents per square foot under paragraph 1022 of the same act. The Government has filed a petition with the United States Court of Customs and Patent Appeals for a review of this decision, the question at issue being whether the material around the edges of the mats is braid of the character described in paragraph 1529 (a).

The insertion of "1022" after the figure "1006" in paragraph 1529 (a) of the Tariff Act of 1930, as amended, would have the effect of excluding matting and articles made therefrom and pile mats and floor coverings, wholly or in chief value of cocoa fiber or rattan, and in part of braid which has been loom woven, and ornamented in the process of weaving, or made by hand, or on a lace, knitting, or braiding machine, from paragraph 1529 (a), leaving them to fall under paragraph 1022 of the Tariff Act of 1930. It would also exclude from paragraph 1529

materials and articles of the kinds described in paragraph 1022 of the tariff act, although ornamented by the addition of fringes or other articles specified in paragraph 1529 (a) of the tariff act.

This bill, if enacted into law, would result in no administrative difficulties for the Treasury Department.

In view of your urgent request for expedition of this report, advice has not been secured from the Bureau of the Budget as to the relationship of the proposed legislation to the President's program.

Very truly yours,

STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, D. C., July 7, 1939.

Hon. R. L. DOUGHTON,
*Chairman, Committee on Ways and Means,
House of Representatives.*

MY DEAR MR. DOUGHTON: I refer to your letter of May 26, 1939, requesting my comments or recommendations with respect to H. R. 6328, a bill to amend the Tariff Act of 1930, as amended by section 34 (c) of the Customs Administrative Act of 1938 (U. S. C., 1934 ed., Supp. IV, title 19, sec. 1001, par. 1529 (a)), a copy of which you enclosed, and to my acknowledgment of June 10, 1939.

The bill under reference would, in effect, provide that matting and articles made therefrom, wholly or in chief value of cocoa fiber or rattan, and pile mats and floor coverings, wholly or in chief value of cocoa fiber or rattan, which are specially provided for in paragraph 1022 of the Tariff Act should not be dutiable under paragraph 1529 (a) by reason of the inclusion of any form of ornamentation provided for in the latter paragraph.

It is my understanding that the classification of certain cocoa fiber pile mats with a braid binding around the edges is now the subject of litigation in the customs courts. In *C. I. Penn v. United States* (C. D. 146, decided Apr. 13, 1939), it was held by the United States Customs Court that such mats were properly dutiable under paragraph 1529 (a) as articles in part of braid at 90 percent ad valorem, rather than under paragraph 1022, as modified by a Presidential proclamation of January 13, 1933, at 12 cents per square foot, the rate assessed by the collector of customs. I am informed that an appeal is being taken from the decision of the customs court.

I am informed that cocoa fiber mats have been specifically provided for in every tariff since the act of 1890 and such mats have been regularly assessed with duty under these specific provisions, despite the fact that such mats customarily have a braid binding. The pending bill would, according to my understanding, continue the past classification practice. According to the Department's information, the ad valorem equivalent of the specific rate of duty provided for in paragraph 1022 has amounted in recent years to between 140 and 168 percent.

H. R. 6328, therefore, does not envisage any increase in existing tariff rates or any change in established tariff practice and as a tariff administrative matter is primarily within the special competence of the Treasury Department. The primary concern of this Department is lest such a measure, if favorably acted upon by your committee, might furnish the opportunity—either on the floor of the House or in the Senate—for the proposal of amendments to increase existing tariff rates on other commodities. I am sure that you agree that any such attempt should be opposed in the interests of the foreign-trade program of this Government.

In view of the urgency of this matter it has not been possible to refer this report to the Bureau of the Budget and to ascertain the views of that office on the relation of the report to the program of the President.

Sincerely yours,

CORDELL HULL.

UNITED STATES TARIFF COMMISSION,
Washington, June 6, 1939.

Hon. R. L. DOUGHTON,
Chairman, Committee on Ways and Means, House of Representatives.

MY DEAR MR. DOUGHTON: I have your letter of May 26, 1939, requesting recommendations or comments concerning a bill, H. R. 6328, "to amend the Tariff Act of 1930, as amended by section 34 (c) of the Customs Administrative

Act of 1938 (U. S. C., 1934 edition, Supp. IV, title 19, sec. 1001, par. 1529 (a)," and am enclosing a memorandum in reference thereto.

I am enclosing also a copy of a report to the President by the Tariff Commission of the results of an investigation of the differences in costs of production of pile mats and floor coverings, wholly or in chief value of cocoa fiber, in the United States and in the principal competing country, for the purposes of Section 336 of Title III of the Tariff Act of 1930.

Sincerely yours,

HENRY F. GRADY,
Acting Chairman.

Enclosures.

UNITED STATES TARIFF COMMISSION,
Washington, June 6, 1939.

Memorandum in reference to H. R. 6328, Seventy-sixth Congress, first session, a bill to amend paragraph 1529 (a) of the Tariff Act of 1930 by "* * * inserting '1022' after the figure '1006' "

Paragraph 1022 of the Tariff Act of 1930 is as follows:

"Matting and articles made therefrom, wholly or in chief value of cocoa fiber or rattan, 10 cents per square yard; pile mats and floor coverings, wholly or in chief value of cocoa fiber or rattan, 8 cents per square foot."

The rate on pile mats and floor coverings, wholly or in chief value of cocoa fiber was increased to 12 cents per square foot, effective January 13, 1933, by Presidential proclamation under section 336 of the Tariff Act of 1930.

Although the bill H. R. 6328 would, in effect, exclude any and all articles provided for in paragraph 1022 from the provisions of paragraph 1529 (a), in practical application cocoa fiber pile mats and floor coverings are the only articles which would, at present, be so excluded. For this reason only cocoa fiber pile mats and floor coverings are considered in this memorandum.

Cocoa fiber mats have been provided for eo nomine in each tariff act beginning with the act of 1890. The rates of duty have varied from 8 cents per square foot in the act of 1890 down to 3 cents per square foot in the act of 1913, then up to 8 cents per square foot in the act of 1930, the 8-cent rate last mentioned having been increased to 12 cents per square foot, effective January 13, 1933, under the provisions of section 336 of the Tariff Act of 1930. The equivalent ad valorem of the specific rates averaged about 50 percent under the act of 1890, about 25 percent under the act of 1913, and about 57 percent under the act of 1922. The equivalent ad valorem of the 12-cent-per-square-foot rate established on January 13, 1933, has ranged from 169 percent on imports in 1934 down to 141 percent on imports in 1937.

Practically all cocoa fiber pile mats are made with a braided cocoa fiber binding on both sides and ends. It is understood that they have been manufactured in this manner during the entire period under review and imports have been regularly assessed with duty, at the rates mentioned above, specially provided in the different tariff acts, even though the rates in the Tariff Acts of 1913 and 1922 on articles in part of braid were much higher than the rate assessed on the mats in question.

On April 13, 1939, however, the United States Customs Court decided (C. D. 146) that cocoa fiber pile mats with braided cocoa fiber bindings were dutiable under paragraph 1529 (a) of the Tariff Act of 1930 as articles in part of braid at the rate of 90 percent ad valorem. The court pointed out that the language of paragraph 1529 (a) is so broad as to invade and supersede every other competing paragraph of the tariff act except those expressly excepted therein, and stated:

"Therefore, as far as cocoa fiber pile mats in part of braid are concerned, said paragraph 1529 (a) must be taken as more specific than said paragraph 1022 for dutiable purposes."

This decision of the Customs Court has been appealed to the Court of Customs and Patent Appeals and pending the decision of the higher court the rate of 12 cents per square foot will continue to be assessed on imports.

United States imports of pile mats and floor coverings of cocoa fiber or rattan have been as shown in the following table. Imports under the acts of 1913 and 1922 were classified as "Mats of cocoa fiber or rattan" whereas imports under the act of 1930 are classified as "Pile mats and floor coverings of cocoa fiber of rattan." This change in classification resulted from a change in the phraseology in the tariff acts, but imports under the act of 1930 are comparable with those under preceding acts. It should be noted also that imports have been almost entirely of cocoa fiber mats, since pile mats are rarely made of rattan.

Pile mats and floor coverings of cocoa fiber or rattan: United States imports for consumption

Tariff Act of—	Quantity	Value	Duty		
			Total amount	Rate	Ad valorem equivalent
	<i>Square feet</i>			<i>Per square foot</i>	<i>Percent</i>
1913 ¹	1,231,341	\$141,540	\$36,880	\$0.030	28.06
1922 ¹	3,742,396	395,038	224,543	.060	56.84
1930:					
1931.....	2,377,692	207,509	109,215	.080	91.07
1932.....	1,957,891	111,305	166,631	.080	140.72
1934 ²	1,041,040	74,018	124,926	.120	168.78
1935 ³	1,005,178	81,992	120,621	.120	147.11
1936 ³	821,847	66,132	98,622	.120	149.13
1937 ³	849,912	72,449	101,989	.120	140.80

¹ Annual average.

² Pile mats and floor coverings of cocoa fiber only.

³ Rate of duty increased from 8 to 12 cents per square foot, effective Jan. 13, 1933, sec. 336 (T. D. 46047).

Source: Official statistics of the U. S. Department of Commerce.

United States production of cocoa pile mats and floor coverings are not separately recorded in official statistics but information obtained by the Tariff Commission indicates that production declined from about 1,700,000 square feet, valued at \$530,000 in 1925, to about 195,000 square feet, valued at \$68,250 in 1931, then increased to about 2,034,000 square feet, valued at \$404,000 in 1937.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the rules of the House of Representatives, changes in existing law made by the bill are shown as follows: Existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman.

Paragraph 1529 (a) of the Tariff Act of 1930, as amended:

"PAR. 1529. (a) Laces, lace fabrics, and lace articles, made by hand or on a lace, net, knitting, or braiding machine, and all fabrics and articles made on a lace or net machine, all the foregoing, plain or figured; lace window curtains, veils, veilings, flouncings, all-overs, neck ruffings, flutings, quillings, ruchings, tuckings, insertings, galloons, edgings, trimmings, fringes, gimps, and ornaments; braids, loom woven and ornamented in the process of weaving, or made by hand, or on a lace, knitting, or braiding machine; and fabrics and articles embroidered (whether or not the embroidery is on a scalloped edge), tamboured, appliqued, ornamented with beads, bugles, or spangles, or from which threads have been omitted, drawn, punched, or cut, and with threads introduced after weaving to finish or ornament the openwork, not including one row of straight hemstitching adjoining the hem; all the foregoing, and fabrics and articles wholly or in part thereof, finished or unfinished (except materials and articles, provided for in paragraph 915, 920, 1006, 1022, 1111, 1116 (a), 1504, 1505, 1513, 1518, 1523, or 1530 (c), or in Title II (free list), or in subparagraph (b) of this paragraph), by whatever name known, and to whatever use applied, and whether or not named, described, or provided for elsewhere in this Act, when composed wholly or in chief value of filaments, yarns, threads, tinsel wire, lame, bullions, metal threads, beads, bugles, spangles, or rayon or other synthetic textile, 90 per centum ad valorem. Hose and half-hose wholly or in chief value of cotton or of wool shall not be dutiable at the above rate by reason of being embroidered, if the embroidery is such as is commonly known as clocking and does not exceed one inch in width or six inches in length, exclusive of the fork, but shall be subject to a duty of 75 per centum ad valorem."

