CUSTOMS SIMPLIFICATION ACT

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

EIGHTY-SECOND CONGRESS

SECOND SESSION

ON

H. R. 5505

AN ACT TO AMEND CERTAIN ADMINISTRATIVE PROVISIONS OF THE TARIFF ACT OF 1930 AND RELATED LAWS, AND FOR OTHER PURPOSES

APRIL 22, 23, 24, 25, 28, AND 29, 1952

Printed for the use of the Committee on Finance

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CONTENTS

CUSTOMS SIMPLIFICATION ACT

TUESDAY, APRIL 22, 1952

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10 a. m., in room 312, Senate Office Building, Senator Clyde R. Hoey presiding.

Present: Senators Hoey, Butler of Nebraska, and Williams.

Also present: Elizabeth B. Springer, chief clerk; and Serge N. Benson, professional staff member.

Senator HOEY. The committee will please come to order.

The hearings today are on the customs simplification bill, H. R. 5505. That bill will be inserted in the record at this point:

(The bill referred to, H. R. 5505, is as follows:)

[H. R. 5505, 82d Cong., 1st sess.]

AN ACT To amend certain administrative provisions of the Tariff Act of 1930 and related laws, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND EFFECTIVE DATE

SECTION 1. This Act may be cited as the "Customs Simplification Act of 1951" and shall be effective, except as otherwise specially provided for, on and after the thirtieth day following the date of its enactment.

TABLE OF CONTENTS

ANTIDUMPING AND COUNTERVAILING DUTIES

SEC. 2. (a) Section 201 (a) of the Antidumping Act, 1921 (U. S. C., 1946 edition, title 19, sec. 160 (a)), is amended by inserting "or retarded" after "is prevented."

(b) Section 202 (a) of the Antidumping Act, 1921 (U. S. C., 1946 edition, title 19, sec. 161 (a)), is amended by changing the period at the end thereof to a comma and adding "less an amount equal to any countervailing duty imposed on the merchandise by reason of a payment or bestowal of a bounty or grant."

(c) Section 303 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1303), is amended by inserting after the words "corporation shall" in the first sentence the words "through multiple official rates of its exchange in terms of United States dollars, or otherwise," and by changing the period at the end of the first sentence to a comma and adding "less an amount equal to any special dumping duty imposed on the merchandise. Such countervailing duty shall be imposed only if the Secretary of the Treasury shall determine, after such investigation as he deems necessary, that an industry in the United States is being or is likely to be injured, or is prevented or retarded from being established, by reason of the importation into the United States of articles or merchandise of the class or kind in respect of which the bounty or grant is paid or bestowed. The exemption of any exported article or merchandise from a duty or tax imposed on like articles or merchandise when destined for consumption in the country of origin or exportation, or the refunding of such a duty or tax, shall not be deemed to constitute a payment or bestowal of a bounty or grant within the meaning of this section."

REPEAL OF SPECIAL MARKING REQUIREMENTS

SEC. 3. (a) Paragraphs 28, 354, 355, 357, 358, 359, 360, 361, and 1553 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1001, pars, 28, 354, 355, 357, 358, 359, 360, 361, and 1553) are amended as follows:

Paragraph 28 is amended by deleting from subparagrah (f) "the immediate container and".

Paragraph 354 is amended by deleting the second proviso.

Paragraphs 355, 357, 358, 359, 360, and 361 are amended by deleting the provisos.

Paragraph 1553 is amended by deleting both provisos.

(b) Section 2934 of the Revised Statutes (U. S. C., 1946 edition, title 19, sec. 134) is repealed.

REPEAL OF CERTAIN OBSOLETE RECIPROCAL PROVISIONS

SEC. 4. (a) Paragraph 812 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1001, par. 812) is amended by deleting the proviso relating to the importation of spirits in certain containers.

(b) Section 320 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1320), relating to reciprocal agreements covering advertising matter, is repealed.

AMERICAN GOODS RETURNED

SEC. 5. Paragraph 1615 (f) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1201, par. 1615 (f)), is further amended by adding at the end thereof the following new sentences: "When because of the destruction of customs records or for other cause it is impracticable to establish whether drawback was allowed, or to determine the amount of drawback allowed, on a reimported article except under subparagraph (e), there shall be assessed thereon an amount of duty equal to the estimated drawback and internal-revenue tax which would be allowable or refundable if the imported merchandise used in the manufacture or production of the reimported article were dutiable or taxable at the rate applicable to such merchandise on the date of importation, but in no case more than the duty and tax that would apply if the article were originally imported. In order to facilitate the ascertainment and collection of the duty provided for in this subparagraph, the Secretary of the Treasury is authorized to ascertain and specify the amounts of duty equal to drawback or internal-revenue tax which shall be applied to articles or classes or kinds of articles, and to exempt from the assessment of duty articles or classes or kinds of articles excepted under subparagraph (e) with respect to which the collection of such duty involves expense and inconvenience to the Government which is disproportionate to the probable amount of such duty."

FREE ENTRY PROVISIONS FOR TRAVELERS

SEC. 6. Paragraph 1798 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1201, par. 1798), is further amended to read as follows:

"PAR. 1798. (a) Professional books, implements, and tools of trade, occupation, or employment, when imported by or for the account of any person arriving in the United States by whom or for whose account they were taken abroad.

"(b) In the case of any person arriving in the United States who is not a returning resident thereof—

"(1) wearing apparel, articles of personal adornment, toilet articles, and similar personal effects; all the foregoing, if actually owned by and in the possession of such person abroad at the time of or prior to his departure for the United States, and if appropriate for his own personal use and intended only for such use and not for any other person nor for sale;

"(2) automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation, and the usual equipment accompanying the foregoing; any of the foregoing imported in connection with the arrival of such person and to be used in the United States only for the transportation of such person, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance; and

"(3) not exceeding $200 in value of articles accompanying such a person who is in transit to a place outside United States customs territory and who will take the articles with him to such place.

"(c) In the case of any person arriving in the United States who is a returning resident thereof—

"(1) all personal and household effects taken abroad by him or for his account and brought back by him or for his account; and

"(2) articles (including not more than one wine gallon of alcoholic beverages and not more than one hundred cigars) acquired abroad as an incident of the journey from which he is returning, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury, up to but not exceeding in aggregate value—

"(A) $200, if such person arrives from a contiguous country which maintains a free zone or free port (see subparagraph (d)), or arrives from any other country after having remained beyond the territorial limits of the United States for a period of not less than forty-eight hours, and in either case has not claimed an exemption under this subdivision (A) within the thirty days immediately preceding his arrival; and

"(B) $300 in addition, if such person has remained beyond the territorial limits of the United States for a period of not less than twelve days and has not claimed an exemption under this subdivision (B) within the six months immediately preceding his arrival.

"(d) In the case of persons arriving from a contiguous country which maintains a free zone or free port, if the Secretary of the Treasury deems it necessary in the public interest and to facilitate enforcement of the requirement that the exemption shall apply only to articles acquired as an incident of the foreign journey, he shall prescribe by special regulation or instruction, the application of which may be restricted to one or more ports of entry, that the exemption authorized by subdivision (2) (A) of subparagraph (c) shall be allowed only to residents who have remained beyond the territorial limits of the United States for not less than a specified period, not to exceed twenty-four hours, and after the expiration of ninety days after the date of such regulation or instruction allowance of the said exemption shall be subject to the limitation so prescribed.

"(e) All articles exempted by this paragraph from the payment of duty shall be exempt also from the payment of any internal-revenue tax imposed on or by reason of importation.

"(f) If any jewelry or similar articles of personal adornment having a value of $300 or more which have been exempted from duty under subdivision (1) of subparagraph (b) or any article which has been exempted from duty under subdivision (2) (B) of subparagraph (c) is sold within three years after the date

of importation, or if any article which has been exempted from duty under subdivision (2) of subparagraph (b) is sold within one year after the date of importation, without prior payment to the United States of the duty which would have been payable at the time of entry if the article had been entered without the benefit of this paragraph, such article, or its value (to be recovered from the importer), shall be subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent shall not be subject to the provisions of this subparagraph.

"(g) The Secretary of the Treasury shall prescribe methods and regulations for carrying out the provisions of this paragraph. No exemption provided for in this paragraph shall be applied to any article which is not declared in accordance with such regulations."

FREE ENTRY FOR NONCOMMERCIAL EXHIBITIONS

SEC. 7. (a) Paragraph 1809 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1201, par. 1809) is amended by inserting "within five years after the date of entry hereunder" after "used contrary to this provision" and by inserting "within such five-year period" after "at any time."

(b) The conditions of any bond in force on the effective date of this Act in respect of articles previously entered under the provisions of paragraph 1809 or the corresponding provisions of any Tariff Act prior to the Tariff Act of 1930 shall be deemed to have been satisfied upon the effective date of this Act or upon the expiration of five years from the date such articles were entered, whichever is later, except with respect to any violation which has occurred or which shall have occurred before such time.

TEMPORARY FREE ENTRY FOR SAMPLES AND OTHER ARTICLES UNDER BOND

SEC. 8. (a) (1) The part of section 308 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1308), preceding the numbered items is amended to read as follows: "The following articles, when not imported for sale or for sale on approval, may be admitted into the United States under such rules and regulations as the Secretary of the Treasury may prescribe, without the payment of duty, under bond for their exportation within six months from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial six months, shall not exceed a total of three years:".

(2) This amendment shall be effective with respect to articles imported before or after this section becomes effective but shall not be effective with respect to any article for which the six-month period, or a lawful extension thereof, has expired before the effective date of this amendment.

(b) Section 308 (5) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1308 (5)), is further amended to read as follows:

"(5) Automobiles, motorcycles, bicycles, airplanes, airships, balloons, boats, racing shells, and similar vehicle and craft, and horses, and the usual equipment of the foregoing; all the foregoing which are brought temporarily into the United States by nonresidents for the purpose of taking part in races or other specific contests;".

SUPPLIES AND EQUIPMENT FOR VESSELS AND AIRCRAFT

SEC. 9. (a) Sections 309 (a) and 309 (b) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1309 (a), (b)), relating to articles for certain vessels and aircraft are further amended to read as follows:

"(a) EXEMPTION FROM DUTIES AND TAXES.—Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse or from continuous customs custody elsewhere than in a bonded warehouse, free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

"(1) for supplies (not including equipment) of (A) vessels of war or public aircraft of the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or (C)

aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; or

"(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign vessels is permitted; or

"(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

"(b) DRAWBACK.—Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere than in a bonded warehouse and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter."

(b) Section 317 (b) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1317), is amended to read as follows:

"(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft described in subsection (a) (2) (A) and (B), or (a) (3) (A), of section 309 of this Act, or for use as ground equipment for any aircraft described in subsection (a) (3) (A) of section 309 shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall not be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation."

DRAWBACK ON EXPORT OF IMPORTS NOT ORDERED

SEC. 10. (a) Section 313 (c) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1313 (c)), is further amended by inserting "or shipped without the consent of the consignee" after "sample or specifications" and by substituting "ninety days" for "thirty days."

(b) Section 313 (i) (2) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1313 (i) (2)), is further amended by inserting ", or shipment without the consignee's consent," after "sample or specifications."

ADMINISTRATIVE EXEMPTIONS

SEC. 11. Section 321 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1321), is amended to read as follows:

"SEC. 321. ADMINISTRATIVE EXEMPTIONS.

"(a) Subject to such exceptions and under such regulations as the Secretary of the Treasury shall prescribe, collectors shall disregard any difference of less than $5 between the total estimated duties or taxes deposited, or the total duties or taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties or taxes actually accruing thereon.

"(b) Subject to such exceptions and under such regulations as the Secretary of the Treasury shall prescribe, articles (not including alcoholic beverages, manufactured tobacco, snuff, cigars, or cigarettes) shall be admitted free of duty and of any tax imposed on or by reason of importation in the following cases:

"(1) When the articles are on the person or in the accompanying baggage of an individual arriving in the United States who is not entitled to any exemption from duty or tax under paragraph 1798 (c) (2) of this Act and the aggregate value of such articles is not over $10, if the articles are intended for the personal or household use of such individual and not for sale, or $5 in any other case. This exemption shall not be allowed to any person more than once in one day.

"(2) When the articles are imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States and

the aggregate value of all articles in the shipment is not over $10, if the articles are intended for the personal or household use of the consignee and not for sale, or $5 in any other case. The privilege of this subdivision shall not be granted to any C. O. D. shipment or in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision.

"(c) The purpose of this section is to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected. Therefore, the Secretary of the Treasury is authorized by regulations to diminish any dollar amount specified heretofore in this section and to prescribe exceptions to any exemption provided for in this section whenever he finds that such diminutions or exceptions are consistent with the purpose above stated, or are for any reason necessary to protect the revenue or to prevent unlawful importations."

INTERNATIONAL TRAFFIC AND RESCUE WORK

SEC. 12. The Tariff Act of 1930, as amended, is further amended by adding immediately following section 321 (U. S. C., 1946 edition, title 19, sec. 1321) a new section reading as follows:

"SEC. 322. INTERNATIONAL TRAFFIC AND RESCUE WORK.

"(a) Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

"(b) The Secretary of the Treasury may provide by regulations or special instructions for the admission, without entry and without the payment of any duty or tax imposed upon or by reason of importation, of—

"(1) aircraft, equipment, supplies, and spare parts for use in searches, rescues, investigations, repairs, and salvage in connection with accidental damage to aircraft;

"(2) fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations; and

"(3) rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters.

Any articles admitted under the authority of this subsection and used otherwise than for a purpose herein expressed, or not exported in such time and manner as may be prescribed in the regulations or instructions herein authorized, shall be forfeited to the United States."

VALUE

SEC. 13. (a) Section 402 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1402), is further amended to read as follows:

"SEC. 402. VALUE.

"(a) BASIS.—Except as otherwise specifically provided for, the value of imported merchandise for the purposes of this Act shall be—

"(1) the export value;

"(2) if the export value cannot be ascertained satisfactorily, then the United States value;

"(3) if neither the export value nor the United States value can be ascertained satisfactorily, then the comparative value;

"(4) if neither the export value, the United States value, nor the comparative value can be ascertained satisfactorily, then the constructed value; or

"(5) in the case of an article with respect to which there is in effect under section 336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such domestic article.

"(b) EXPORT VALUE.—The export value of imported merchandise shall be the market value or the price, at the time of exportation to the United States of the merchandise undergoing appraisement at which such or similar merchandise is freely sold or offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other charges and

expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

"(c) UNITED STATES VALUE.—The United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

"(1) any commission paid or agreed to be paid on merchandise secured otherwise than by purchase; or, on merchandise secured by purchase or agreement to purchase, the addition for profit and general expenses usually made by sellers in such market on imported merchandise of the same class or kind as the merchandise undergoing appraisement;

"(2) the usual costs of transportation and insurance and other usual expenses from the place of shipment to the place of delivery, not including any expense provided for in (1); and

"(3) the ordinary customs duties and Federal taxes estimated to be payable on such or similar merchandise by reason of its importation or for which vendors at wholesale in the United States are ordinarily liable.

"If such or similar merchandise was not so sold or offered at the time of exportation of the merchandise undergoing appraisement, the United States value shall be ascertained or estimated, subject to the foregoing specifications of this subsection, from the price at which such or similar merchandise is freely sold or offered for sale at the earliest date after such time of exportation but before the expiration of ninety days after the importation of the merchandise undergoing appraisement.

"(d) COMPARATIVE VALUE.—The comparative value of imported merchandise shall be the equivalent of the export value as nearly as such equivalent may be ascertained or estimated on the basis of the export or United States value of other merchandise from the same country which is comparable in construction and use with the merchandise undergoing appraisement, with appropriate adjustments for differences in size, material, construction, texture, or other differences.

"(e) CONSTRUCTED VALUE.—The constructed value of imported merchandise shall be the sum of—

"(1) the cost of materials and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

"(2) an addition for general expenses and profit equal to that which producers in the country of production whose products are exported to the United States usually add in sales, in the usual wholesale quantities and in the ordinary course of trade, of merchandise of the same general class or kind as the merchandise undergoing appraisement; and

"(3) the cost of all containers and coverings of whatever nature, and all other charges and expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

"(f) AMERICAN SELLING PRICE.—The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other charges and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely sold or offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

"(g) TAXES.—The value of imported merchandise ascertained or estimated in accordance with this section shall not include the amount of any internal tax, applicable within the country of origin or exportation, from which the merchandise undergoing appraisement has been exempted or has been or will be relieved by means of refund.

"(h) DEFINITIONS.—As used in this section, the following terms shall have the meanings respectively indicated:

"(1) 'Freely sold or offered for sale'—sold or offered to all purchasers at wholesale without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (A) are imposed or required by law, or (B) limit the price at which or the territory in which the merchandise may be resold, or (C) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

"(2) 'Ordinary course of trade'—the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement.

"(3) 'Purchasers at wholesale'—purchasers who buy in the usual wholesale quantities for industrial use or for resale otherwise than at retail; or, if there are no such purchasers, then all other purchasers for resale who buy in the usual wholesale quantities; or, if there are no purchasers in either of the foregoing categories, then all other purchasers who buy in the usual wholesale quantities.

"(4) 'Such or similar merchandise'—the merchandise undergoing appraisement shall be considered 'such' merchandise, and other merchandise shall be considered 'such' merchandise if—

"(A) it is identical in physical characteristics and was produced in the same country by the same person, or

"(B) when no value meeting the requirements of the definition of value under consideration can be ascertained or estimated under (A), the merchandise is identical in physical characteristics and was produced by another person in the same country.

Merchandise shall be considered 'similar' to the merchandise undergoing appraisement if it is not within the foregoing definition of 'such' merchandise but—

"(C) it was produced in the same country as the merchandise undergoing appraisement, by the same person, of like materials, is used for the same purpose, and is of approximately equal commercial value, or

"(D) when no value meeting the requirements of the definition of value under consideration can be ascertained or estimated under (C), the merchandise is correspondingly similar and was produced by another person in the same country.

"(5) 'Usual wholesale quantities'—the quantities usually sold in the class of transactions in which the greater aggregate quantity of the 'such or similar merchandise,' in respect of which value is being ascertained or estimated, is sold in the market under consideration."

(b) Paragraph 27 (c) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1001, par. 27 (c)), is amended by changing "subdivision (g)" to "subdivision (f)" and by changing "subdivision (e)" to "subdivision (c)."

(c) Paragraph 28 (c) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1001, par. 28 (c)), is amended by changing "subdivision (g)" to "subdivision (f)" and by changing "subdivision (e)" to "subdivision (c)."

(d) Section 336 (b) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1336 (b)), is amended by changing "section 402 (g)" to "section 402 (f)."

SIGNING AND DELIVERY OF MANIFESTS

SEC. 14. Section 431 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1431) is amended by designating the matter now therein as subsection (a) and by adding a new subsection to read as follows:

"(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity."

CERTIFIED INVOICES AND INFORMAL ENTRIES

SEC. 15. (a) Section 482 (a) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1482 (a)) is amended by substituting "required pursuant to section

484 (b) of this Act to be certified" for "covering merchandise exceeding $100 in value" in the first clause.

(b) Section 498 (a) (1) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1498 (a) (1)) is amended to read as follows:

"(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions;".

(c) Section 498 (a) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1498 (a)) is further amended by deleting the word "and" at the end of subdivision (10); by deleting the period at the end of subdivision (11) and substituting therefor "; and"; and by adding after subdivision (11) a new subdivision to read as follows:

"(12) Merchandise within the provisions of paragraph 1631 of this Act."

VERIFICATION OF DOCUMENTS

SEC. 16. Section 486 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1486) is amended by changing the caption to read "ADMINISTRATION OF OATHS—VERIFICATION OF DOCUMENTS" and by adding at the end thereof the following new subsection:

"(d) The Secretary of the Treasury may by regulation prescribe that any document required by any law administered by the Customs Service to be under oath may be verified by a written declaration in such form as he shall prescribe, such declaration to be in lieu of the oath otherwise required."

AMENDMENT OF ENTRIES AND DUTIES ON UNDERVALUATION

SEC. 17. (a) Section 487 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1487) is amended by deleting thereform ", or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisement,".

(b) Section 489 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1489) is amended to read as follows:

"SEC. 489. UNDERVALUATION—UNAUTHENTIC CLAIM OF ANTIQUITY.

"(a) If the final appraised value of any article of imported merchandise subject to an ad valorem rate of duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the entered value, and if the consignee shall have failed to furnish the appraiser, before that officer has signed his report of value to the collector, all information required by customs officers which is relevant to the value of the merchandise and available to him at the time of entry or within a reasonable time thereafter, and all such information that is so available to the person, if any, in whose behalf the entry was made, there shall be levied, collected, and paid, in addition to any other duties imposed by law on such merchandise, a special duty of 1 per centum of the total final appraised value thereof for each 1 per centum that such final appraised value exceeds the value declared in the entry. Such special duty shall apply only to the particular article or articles in each invoice that are so advanced in value upon final appraisement, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the final appraised value does not exceed the amount of duty that would have been imposed if the final appraised value had not exceeded the entered value.

"(b) The liquidation in which such special duty is assessed shall be subject to the protest and review procedure provided for in sections 514 and 515 of this Act, but such special duty shall not be remitted nor the payment thereof in any way avoided except upon an administrative decision under section 515 that the special duties were erroneously assessed or upon a finding by the United States Customs Court, after due assignment and determination pursuant to section 515, and under such rules as the Court may prescribe, that the entry of the merchandise at a less value than its final appraised value was without any culpable negligence or intention to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise.

"(c) The special duty imposed by subsection (a) shall not be construed to be penal. It shall not be refunded by reason of exportation of the merchandise, nor shall it be subject to the benefit of drawback. All special or additional duties, penalties, or forfeitures applicable to merchandise entered in connection with a

certified invoice shall be applicable alike to merchandise entered in connection with a seller's or shipper's invoice or a statement in the form of an invoice.

"(d) Furniture described in paragraph 1811 of section 201 of this Act shall enter the United States at ports which shall be designated by the Secretary of the Treasury for this purpose. If any article described in said paragraph 1811 and imported for sale is rejected as unauthentic in respect to the antiquity claimed as a basis for free entry, there shall be imposed, collected, and paid on such article, unless exported under customs supervision, a duty of 25 per centum of the value of such article in addition to any other duty imposed by law upon such article."

(c) Section 501 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, Supp. II, title 19, sec. 1561), is further amended by changing the period at the end of the first sentence to a comma and by inserting thereafter "or (3) in any case, if the consignee, his agent, or his attorney requests such notice in writing before appraisement, setting forth a substantial reason or reasons for requesting the notice.", and by deleting the third sentence of the section.

(d) Section 503 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1503) is amended by deleting "the entered value or" and ", whichever is higher" from subsection (a), by deleting subsection (b), and by redesignating subsection (c) as subsection (b).

(e) The Act of July 12, 1932 (ch. 473, 47 Stat. 657; U. S. C., 1946 edition, title 19, sec. 1503a), is repealed.

(f) Section 562 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1562), is further amended by changing the third sentence to read as follows: "The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value."

COMMINGLED MERCHANDISE

SEC. 18. Section 508 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1508) is amended to read as follows:

"SEC. 508. COMMINGLING OF GOODS.

"(a) Whenever dutiable merchandise and merchandise which is free of duty or merchandise subject to different rates of duty are so packed together or mingled that the quantity or value of each class of such merchandise cannot be readily ascertained by the customs officers (without physical segregation of the shipment or the contents of any entire package thereof), by one or more of the following means: (1) Examination of a representative sample, (2) occasional verification of packing lists or other documents filed at the time of entry, or (3) evidence showing performance of commercial settlement tests generally accepted in the trade and filed in such time and manner as may be prescribed by regulations of the Secretary of the Treasury, and if the consignee or his agent shall not segregate the merchandise pursuant to subsection (b), then the whole of such merchandise shall be subject to the highest rate of duty applicable to any part thereof.

"(b) Every segregation of merchandise made pursuant to this section shall be accomplished by the consignee or his agent at the risk and expense of the consignee within twenty days after the date of personal delivery or mailing by the collector of written notice to the consignee that the merchandise is commingled. Every such segregation shall be accomplished under customs supervision, and the compensation and expenses of the supervising customs officers shall be reimbursed to the Government by the consignee under such regulations as the Secretary of the Treasury may prescribe.

"(c) The foregoing provisions of this section shall not apply with respect to any part of a shipment if the consignee or his agent shall furnish to the collector, in such time and manner as may be prescribed by regulations of the Secretary of the Treasury, satisfactory proof (1) that such part (A) is commercially negligible, (B) is not capable of segregation without excessive cost, and (C) will not be segregated prior to its use in a manufacturing process or otherwise, and (2) that the commingling was not intended to avoid the payment of lawful duties or any part thereof. Any merchandise with respect to which such proof is furnished shall be considered for all customs purposes as a part of the merchandise, subject to the next lower rate of duty (including a free rate), with which it is commingled."

CORRECTION OF ERRORS AND MISTAKES

SEC. 19. Section 520 (c) (1) of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1520 (c) (1)), is further amended to read as follows:

"(1) A clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, appraisement, or transaction, or within sixty days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of the entry, appraisement, or transaction; or"

CONVERSION OF CURRENCY

SEC. 20. (a) Section 25 of the Act of August 27, 1894, as amended and reenacted (U. S. C., 1946 edition, title 31, sec. 372 (a)), is repealed, and section 522 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 31, sec. 372) is amended to read as follows:

"SEC. 522. CONVERSION OF CURRENCY.

"(a) The Secretary of the Treasury shall keep current a published list of the par values, expressed in United States dollars, of the several foreign currencies maintained pursuant to the Articles of Agreement of the International Monetary Fund, or pursuant to any other international agreement to which the United States is a party. For the purposes of all provisions of the customs laws, whenever it is necessary to convert into an amount expressed in currency of the United States any amount expressed in a foreign currency for which such a par value was maintained for the date as of which the value or cost requiring conversion is to be determined, such conversion, except as specified in subsection (d), shall be made at such par value.

"(b) If no such par value was so maintained for such date, the conversion shall be made at the buying rate for the foreign currency in the New York market at noon on the date as of which the value or cost requiring conversion is to be determined, or, if banks are generally closed on such date in New York City, then the buying rate at noon on the last preceding business day. For the purposes of this subsection, such buying rate shall be the buying rate for cable transfers payable in the foreign currency in which the amount to be converted is expressed, and shall be determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury, who shall make it public at such times and to such extent as he shall deem necessary. In ascertaining such buying rate, such Federal Reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange or from the last ascertainable transactions and quotations outside the United States in or for exchange payable in United States currency or other currency.

"(c) If, pursuant to subsection (b), the Federal Reserve Bank of New York certifies more than one rate of exchange for a particular foreign currency for any date the conversion for customs purposes of amounts expressed in that currency for that date shall be made by applying the applicable rate or rates so certified which reflect effectively the value of that foreign currency in commercial transactions.

"(d) When, apart from normal variation between buying and selling rates, there are one or more rates of exchange in addition to the par value for any foreign currency listed pursuant to subsection (a), the list shall so indicate. When rules governing the conversion of such foreign currencies have been formulated pursuant to an international agreement to which the United States is a party, the Secretary of the Treasury shall issue regulations in conformity with such rules, and the conversion for customs purposes of amounts expressed in such currencies into amounts expressed in currency of the United States shall thereafter be in accordance with such regulations so long as they are in effect. If no regulations are in effect and applicable to the conversion of such a currency, one or more rates of exchange in addition to the par value may be certified

in the manner set forth in subsection (b) and the par value and any certified rates shall be applied in the manner prescribed in subsection (c)."

(b) Section 481 (a) of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1481 (a)) is amended by deleting subparagraph (7) and by renumbering subparagraphs (8), (9), and (10) as (7), (8), and (9).

CUSTOMS SUPERVISION

SEC. 21. The Tariff Act of 1930, as amended, is further amended by adding following section 645 (U. S. C., 1946 edition, title 19, sec. 1645 a new section 646 reading as follows:

"SEC. 646. CUSTOMS SUPERVISION.

"Wherever in this Act any action or thing is required to be done or maintained under the supervision of customs officers, such supervision may be direct and continuous or by occasional verification as may be required by regulations of the Secretary of the Treasury, or, in the absence of such regulations for a particular case, as the principal customs officer concerned shall direct."

CONVERSION OF PROCESSING TAXES TO IMPORT TAXES

SEC. 22. (a) As soon as each proper rate can be determined by the United States Tariff Commission, that Commission shall certify to the President the respective rate or rates of import tax for copra, palm nuts, and palm-nut kernels which the Commission estimates to be reasonably equivalent in respect of each commodity to the relevant tax imposed on the date of the enactment of this Act under section 2470 of the Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2470) on the first domestic processing of coconut oil and palm-kernel oil, respectively. The certified rates shall be proclaimed by the President, and on and after the thirtieth day after the date all the certified rates have been so proclaimed the amendments of law specified hereafter in this section shall be effective, with the proclaimed rates inserted in the redesignated and amended section 2491 (e) of the Internal Revenue Code in the respective blank spaces following the descriptions of the products for which the rate shall have been proclaimed.

(b) Section 2470 (b) of the Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2470 (b)) is amended by changing the period at the end thereof to a comma and adding "or (3) with respect to any commodity, or product of a commodity, upon which an import tax has been paid under chapter 22."

(c) (1) Section 2491 (c), (d), (e), (f) of the Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2491 (c) (d), (e), (f)) are amended to read as follows:

"(c) (1) Coconut oil, palm oil, and palm-kernel oil, fatty acids derived from any of the foregoing oils, and salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), 3 cents per pound.

"(2) There shall be imposed (in addition to the tax prescribed in paragraph (1)) on coconut oil a tax of 2 cents per pound, except that the additional tax imposed by this paragraph shall not apply when it is established, in accordance with regulations prescribed by the Secretary of the Treasury, that the imported product (A) is wholly the production of the Philippine Republic or of any possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Republic or of any possession of the United States. The additional tax imposed by this paragraph shall not apply after July 3, 1974.

"(3) Whenever the President, after consultation with the President of the Philippine Republic, finds that adequate supplies of neither copra nor coconut oil, the product of the Philippine Republic, are readily available for processing in the United States, he shall so proclaim, and after the date of such proclamation the provisions of paragraph (2) of this subsection and of pargraph (2) of subsection (e) shall be suspended until the expiration of thirty days after he proclaims that, after consultation with the President of the Philippine Republic, he has found that such adequate supplies are so readily available.

"(d) Any commodity, not provided for heretofore in this section, 10 per centum or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified above in this section, a tax at the rate or rates per pound equal to that proportion of the rate or rates prescribed in this section in respect of such product or products which the

quantity by weight of the imported commodity, consisting of or derived from such product or products, bears to the total weight of the imported commodity; but there shall not be taxable under this subsection any commodity (other than an oil, fat, or grease, and other than products resulting from processing seeds without full commercial extraction of the oil content), by reason of the presence therein of an oil, fat, or grease which is a natural component of such commodity and has never had a separate existence as an oil, fat, or grease;

"(e) (1) Hempseed, 1.24 cents per pound; perilla seed, 1.38 cents per pound; kapok seed, 2 cents per pound; rapeseed, 2 cents per pound; sesame seed, 1.18 cents per pound; and copra, per pound; palm nuts, per pound; and palm-nut kernels, per pound;

"(2) There shall be imposed (in addition to the tax prescribed in paragraph (1)) on copra a tax of per pound, except that the additional tax imposed by this paragraph shall not apply when it is established, in accordance with regulations prescribed by the Secretary of the Treasury, that the imported product (A) is wholly the production of the Philippine Republic or of any possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Republic or of any possession of the United States. The additional tax imposed by this paragraph shall not apply after July 3, 1974.

"(f) The tax imposed under subsection (b) shall not apply to rapeseed oil imported to be used in the manufacture of rubber substitutes or lubricating oil, and the tax imposed under subsection (c) (1) shall not apply to palm oil imported to be used in the manufacture of iron or steel products, tin plate, or terneplate. The Secretary of the Treasury shall prescribe methods and regulations to carry out this subsection."

(2) Section 2491 of the Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2491) is further amended by adding a new subsection (h) reading as follows:

"(h) No drawback in respect of any tax imposed by this section shall be allowed under any provision of law on the exportation of any byproduct resulting from the production of coconut oil or palm-kernel oil in the United States."

(d) Section 2493 of the Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2493) is amended by changing the period at the end thereof to a semicolon and adding new paragraphs to read as follows:

"(4) for the purposes of the Philippine Trade Act of 1946 (U. S. C., 1946 edition, title 22, sec. 1251–1360), the term 'ordinary customs duty' shall not include any tax prescribed in section 2491 (c) or (d), or in section 2491 (e) with respect to copra, palm nuts, or palm-nut kernels, and the term 'internal tax' shall include such taxes;

"(5) the taxes imposed on oils and derivative products under section 2491 (c) and on copra, palm nuts, and palm-nut kernels under section 2491 (e) shall not be subject to modification under section 350 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, title 19, sec. 1351)."

(e) Section 2492 of the Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2492) is amended by deleting the date "August 21, 1936," and by inserting in place thereof the words "the date of the proclamation provided for in section 22 (a) of the Customs Simplification Act of 1951,".

SAVING CLAUSE

SEC. 23. Except as may be otherwise provided for in this Act, the repeal of existing law or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal or modification, but all liabilities under such laws shall continue, except as otherwise specifically provided in this Act, and may be enforced in the same manner as if such repeal or modification had not been made.

RELATING TO GENERAL AGREEMENT ON TARIFFS AND TRADE

SEC. 24. The enactment of this Act shall not be construed to determine or indicate the approval or disapproval by the Congress of the Executive Agreement known as the General Agreement on Tariffs and Trade.

Passed the House of Representatives October 15, 1951.

Attest:

RALPH R. ROBERTS, *Clerk.*

Senator HOEY. The chairman of the committee is necessarily absent on business in Georgia, and has requested that I preside in his absence.

Our first witness this morning is Mr. John S. Graham, Assistant Secretary of the Treasury.

Mr. Graham, we will be very glad to have you make any statement you like in connection with this matter.

STATEMENT OF JOHN S. GRAHAM, ASSISTANT SECRETARY, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY PHILIP NICHOLS, JR., GENERAL COUNSEL, RENEGOTIATION BOARD; W. R. JOHNSON, ASSISTANT TO THE COMMISSIONER OF CUSTOMS; AND CHARLES McNEILL, ASSISTANT GENERAL COUNSEL

Mr. GRAHAM. Thank you, Mr. Chairman. I have prepared, sir, a statement which covers the more important phases of the bill, which, with your permission, we would like to insert in the record.

Senator HOEY. That will be fine. It will be inserted in the record.

Mr. GRAHAM. In the economy of time, Mr. Chairman, I invite your attention to a couple of the items in here which I think would give us a foundation from which any questions might be asked, either by you or the other members of the committee.

Senator HOEY. That will be entirely agreeable to the committee for you to proceed that way, Mr. Graham.

Mr. GRAHAM. Thank you, sir.

First of all, sir, on page 3, beginning at the third paragraph, the statement reads as follows:

This proposed legislation is part of the over-all management improvement program of the Department which was instituted by Secretary Snyder when he became Secretary of the Treasury.

The Secretary desired that an outside management firm of industrial engineers make an evaluation of the Customs Service. The Congress concurred, and the Eightieth Congress, first session, appropriated a specific sum of money for this purpose in 1947. After careful study the firm of McKinsey & Co., of New York, was selected to do this work. In the letter of authorization the objectives of the survey were stated to the management firm as follows:

> To study the operations of the Bureau of Customs and the Customs Service with a view to promoting the efficiency of operations to the end of performing the duties and responsibilities with which the Customs Service is charged by law and in a manner that will protect the revenues and afford the greatest degree of service to the public. The end objective is to accomplish these results with the greatest degree of economy and the least possible cost to the Government.

McKinsey & Co., after completing their study, made a report which stated, among other things, that—

> all things considered, the Customs Service is as well operated as the average business concern. However, we believe it can be improved.

The report made many suggestions and recommendations. For statistical purposes we considered that the report contained 178 recommendations. The majority of these recommendations, or 142 in number, were termed "administrative." That is to say, the recommendations, if approved, could be placed in effect by order of the Secretary, or the Commissioner of Customs, as the case might be. On the other hand, the recommendations which would require changes in existing law, were termed "legislative." There were 36 such recommendations.

A Steering Committee was appointed by the then Under Secretary A. L. M. Wiggins, consisting of men selected from the Department, the Bureau, and the field, to direct the study. The report was then divided into 15 functional areas, and a "task force" leader was assigned to each area. Qualified people were then chosen from both the headquarters and field offices to assist the leader.

On page 4, Mr. Chairman, the second full paragraph deals with the 36 legislative proposals, and that is to say, it is a box score. You will observe that this bill, H. R. 5505 incorporates 21 of the McKinsey recommendations.

The next item, entitled "Became Effective Due to Passage of Other Legislation After the McKinsey Report," two in number.

There is an item entitled, "Covered by Pending Legislation Other Than H. R. 5505," which picked up five of the items, and the "existing laws permit accomplishment" covers two of the items. Three are still under study, and we rejected three. Those are the 36, "Legislative Recommendations."

After the task forces had completed their work we had a legislative committee which was headed up by Mr. Phil Nichols, Jr., who is sitting here on my left, and who at that time was Assistant General Counsel of the Treasury Department. Mr. Nichols was ably assisted by the gentleman who is sitting on his left, Mr. W. R. Johnson, assistant to the Commissioner of Customs.

Subsequent to the House hearings on this bill, Mr. Chairman, Mr. Nichols has become General Counsel of the Renegotiation Board. However, we have asked him to come here to be present, and he is, in effect, on loan to us and to your committee during the time of these hearings.

With respect to the perhaps most important item in this bill, you will please turn to page 5, Mr. Chairman, and there we deal with section 13, which is value, if I may be permitted to read that page and to the middle of the next page, I think it will give some outline of the reasons why we think this is very important.

Section 13 is undoubtedly the most important single provision of this bill. It amends section 402 of the tariff act which tells the customs appraiser how to find the value of imported merchandise. As I already have explained, many duties are stated as a percentage of the value, so that the value has to be known before the duty can be assessed.

The appraiser, in determining value under the present statutory alternatives, must first ascertain both the "foreign value" and the "export value" and then appraise the merchandise according to whichever is higher. It will be observed that this valuation is made with reference to prices in both the home market and the export trade, of the particular country from which the merchandise is shipped to the United States. Generally speaking, the value of the bulk of all dutiable imported merchandise is determined in this manner rather than by value in the United States.

Often there are various technical restrictions involving either the "foreign value" or "export value" determinations, and, if the appraiser cannot ascertain such values, he must then appraise according to "United States value". In essence, this value is based on offers of the imported product in the United States. If this method does not produce the determination of value, then the appraiser must resort to what the present statute terms "cost of production". We are

suggesting a change of name to "constructed value" as more descriptive of the process of determining this type of value in the foreign country.

It will be noted that the appraiser must know a great deal about offers to sell or sales of the same or like merchandise in the home markets of the country from which the merchandise is shipped, in order to determine "foreign value". In order to secure this information, there is often involved a large expenditure of time and effort on the part of the importer in finding out about transactions in a foreign country which he may know nothing about. Likewise, there is an obvious and inherent difficulty in requiring an American customs official, or an importer, to obtain detailed information as to business operations in a foreign country.

Furthermore, the "foreign value" standard sometimes produces the inequitable result that exports from a small country have a higher valuation for customs purposes than the same exports from larger countries. This happens because the home market in small countries is not large and the usual wholesale prices in that country may not reflect the discounts available for large-quantity sales to importers in the United States. Another difficulty is that the prices in the home market are frequently enhanced by internal taxes which do not apply to the merchandise when exported, and recent court decisions do not completely remove the doubt as to when these taxes have to be added in order to arrive at the dutiable value.

The bill proposes to meet these problems by making the so-called export value the method which the appraisers must employ whenever they are able to do so. Failing in this, they are to use the "United States value." We propose to eliminate the "foreign value" as a method of appraisement entirely. This change was strongly recommended by McKinsey & Co. The advantage of this will be that the information necessary to make an appraisement will usually be available to the appraiser in the United States. Either the very merchandise he is appraising will have been freely offered, so that the sale will be a satisfactory basis for appraisal, or he will have knowledge of the prices paid for similar merchandise imported by other parties.

Section 13 contains a number of other technical provisions which are designed to make it easier to find a value and to make the value when found more commercially realistic. One of the main objections to our present value method is that it takes so long to find the value, and we are confident that if this bill is enacted appraisements will be made much more rapidly.

I think at that point, sir, since that is in our opinion one of the most—probably the most—important one, that we would like to pause there.

However, there is one other point here on page 10, Mr. Chairman, at the top of the page, which I might just invite your attention to. That refers to the two provisions in the original bill, which was then denominated H. R. 1535, and two of the provisions in that bill caused some concern to American industry.

Briefly, those two provisions related to what is known as the American selling price method of valuation, and the basis for taxing distilled spirits. Both of those were eliminated by the House. Although such provisions had the merit of producing simplification by bringing

about uniformity in customs administration, the Treasury does not propose that they be reinstated in the bill by this committee.

Senator HOEY. The Treasury is satisfied with the House action on that subject?

Mr. GRAHAM. We do not interpose any objection, sir, on those two items.

I thought perhaps, Mr. Chairman, that there might be some questions on this very important value provision.

Senator HOEY. Are there any questions on this section 13 that Mr. Graham has been discussing? That is one of the principal changes that is embodied in the bill. If any Senators desire to ask any questions about it, they may do so, and if you have any questions on any other phases of the bill, they may be asked.

As I understand, Mr. Graham, this bill is largely providing for an improvement in administration of the law.

Mr. GRAHAM. That is what we regard it as, sir. It is an improvement in the procedural aspects, primarily of how to do the job better, quicker, simpler, at the least cost to the Government. We do not regard this, sir, as any revenue-raising or losing measure.

Senator HOEY. As I understand, this does not pretend to change the duties or the values or anything like that. It is just a method by which you ascertain the value; and it simplifies, in your opinion, the process by which you arrive at that value.

Mr. GRAHAM. Well, I paraphrase your statement, sir: I think we could say it is not designed to lower or to raise the tariff protection. It is the method of doing the business that we are concerned about. No matter what the level of imports is, there is a certain amount of paper work that has to be done as well as certain physical work in the examination of the packages, and we believe that this bill will make that simpler, both for us and the importers, and that is our basic objective, Mr. Chairman.

Senator HOEY. From the over-all study of this question you feel that this measure, if adopted, would result in a sort of simplification of the whole matter of handling imports, of arriving at their value, as to getting their information, and would expedite the ascertainment of these facts, both for the benefit of the Government and of the importers?

Mr. GRAHAM. Yes, sir; that is our opinion.

Senator HOEY. Any questions?

Senator BUTLER. Mr. Chairman, I did not get here to listen to all of Mr. Graham's statement; in fact, I did not get to hear any of it. However, I think I know in a general way what the purpose of the bill is, and I was wondering if in the statement you touch upon the problem that we have with Argentina or with any other particular country now, or do you just generalize?

Mr. GRAHAM. We were just generalizing, Senator Butler, on the high lights of what we considered the more important procedural problems.

I might say, sir, that in the economy of time we did not read the whole 10 pages. I just read some from page 3, which showed how this came into being, and then on page 5, which was the one we are dealing with now on the question of value.

Senator HOEY. The whole statement will appear in the record, Senator.

Senator BUTLER. I realize that; but, in fact, I would like to know why the Secretary has not done what the law provides already: To have countervailing tariffs when circumstances warrant, as they certainly do in the case of wool from the Argentine, where the wool imports, the tops, are being subsidized by the Argentine Government.

Mr. GRAHAM. I think you refer to the question of multiple-rate currencies and their effect upon the export of wool tops from Argentina.

Senator BUTLER. That would not excuse the Secretary of the Treasury from following the wording of the law; would it?

Mr. GRAHAM. Mr. Chairman, this is a question that, I believe, Senator Butler and some other Senators from the Western States raised with the Treasury Department a little while ago in a letter, and if it meets with the approval of the chairman I would like to ask Mr. Frank Southard, who is Special Assistant to the Secretary, to discuss with you the question of multiple-rate currencies.

Senator HOEY. Is Mr. Southard present?

Mr. GRAHAM. Yes, sir; he is here.

Senator HOEY. Will you come up, Mr. Southard.

Senator BUTLER. I hope, Mr. Chairman, that someone will explain just why the Government has not imposed the countervailing duties that are provided for in the existing law.

Senator HOEY. All right, Mr. Southard. Have a seat, Mr. Southard. Would you give your name to the reporter, and your position.

STATEMENT OF FRANK A. SOUTHARD, JR., SPECIAL ASSISTANT TO THE SECRETARY OF THE TREASURY

Mr. SOUTHARD. My name is Frank A. Southard, Jr. I am Special Assistant to the Secretary of the Treasury.

Senator HOEY. Are you in charge of any particular division, Mr. Southard?

Mr. SOUTHARD. No; I am not, Mr. Chairman.

Senator HOEY. Senator Butler, would you like to ask any questions?

Mr. SOUTHARD. I have, Mr. Chairman, a short statement on this general subject which I can read, if you wish, or I will try to answer questions.

Senator HOEY. Suppose you read the statement first and then we will see whether or not the members have any questions.

Mr. SOUTHARD. Would the chairman and members of the committee like to have copies of my statement in front of them?

Senator HOEY. Yes.

Mr. SOUTHARD. Mr. Chairman and members of the committee, the Secretary has asked me to appear on his behalf to discuss one particular aspect of the bill before the committee; that is, the aspect relating to the imposition of countervailing duties in cases where bounties or grants on exports are found to exist in foreign countries.

If a foreign country bestows a cash bounty on some commodity in order to facilitate its export to the United States, we have a clear-cut set of facts and a finding of grant or bounty can be made promptly. Perhaps, because of the existence of our law, there have, however, been relatively few circumstances in which a country has seen fit to bestow cash bounties on exports which are dutiable on entry into the United States. In these few cases the Treasury has acted. Sometimes countervailing duties have been imposed, and several of them are still on

the books. In other cases, the knowledge that the Treasury was about to levy duties caused the foreign country to withdraw its bounty or otherwise rectify the situation. I should like to point out that in the cases of cash bounties the question of whether the rate of exchange being used was an equitable or a fair rate of exchange, does not arise. Nor does it arise where there is only a single rate of exchange.

Senator BUTLER. In connection with the case in Argentina that I just mentioned, Mr. Southard, has there been anything done?

Mr. SOUTHARD. No, sir; there has not.

Senator BUTLER. Why?

Mr. SOUTHARD. The Treasury Department has still under examination the particular Argentine system of exchange rates, and the examination has not been completed yet. As a matter of fact, it is our understanding that, so far as wool tops are concerned, there has been no movement of wool tops out of the Argentine to this country, so that for the time being the continued Treasury examination of the facts of the Argentine system of exchange rates has not meant that in the meantime there are additional movements to this market of that commodity.

Senator BUTLER. Well, is it not true, Mr. Southard, due to the subsidy the Argentine Government is giving its producers in the sale of tops, that the market for wool tops in this country, domestic, has been seriously hampered?

Mr. SOUTHARD. I do not know, Senator, to my own knowledge.

Senator BUTLER. The woolmen are practically out of business.

Mr. SOUTHARD. You are speaking of the wool-tops producers?

Senator BUTLER. Yes.

Mr. SOUTHARD. Insofar as I am aware—but I would want to check the facts if it is desired to have them in the record—the movement of Argentine wool tops in recent months has been either completely halted or exceedingly small. I believe that it is the former, so that it would not appear to me that imports of wool tops could be a present problem in the wool-tops industry; but I am not fully familiar with what is actually going on in the domestic wool market. Beyond that, the important problem that the Treasury has been endeavoring to examine in the Argentine case, as it does in all cases involving multiple export rates, is to determine whether the effect of multiple export rates has been to give a bounty or a grant to certain products reaching this market or whether, on the contrary, it reflects disorder in the exchange market, the lack of an adequate rate of exchange in the country concerned, partial devaluation, or even, as it happens in many countries, an effort to impose a tax on certain more profitable industries in the country or to deal with inflation by soaking up the income of the more profitable export industries. In other words, what we would like to see is a single export rate of exchange in all countries. But the fact is that a number of countries, having rather embryonic or poor tax systems, resort to multiple export rates to realize revenues or to combat inflation.

Senator BUTLER. Well, I would like to kind of get back to my original question now. It is my understanding that the existing law provides for countervailing duties to be imposed by the Secretary of the Treasury whenever the occasion requires.

Now, wool tops from the Argentine are certainly a case, a good illustration. I do not have the figures in mind, although I could get them,

I guess—and you could, too, perhaps, as to what the situation may be at the moment or in the immediate past—but it certainly is true that the subsidy program of the Argentine Government has practically wrecked the domestic market for wool tops here.

Mr. Chairman, I think maybe a question along this line might bring the information that I am desiring; that is, this: Suppose a shipload of wool tops should suddenly land in the United States; would the Treasury Department apply countervailing duties?

Mr. SOUTHARD. It would depend on the finding of the Secretary of the Treasury with respect to the existence of a bounty or grant.

It is true, Senator, that Argentina has several rates of exchange, and has a higher rate of exchange, or rather—let me put it the other way around—has a more depreciated dollar rate of exchange on certain commodities, including wool tops, than it has on a number of important commodities, including raw wool or greasy wool. If my memory is correct, Argentina has a rate of approximately 5 pesos per dollar on the more important commodities such as raw wool, and 7½ pesos per dollar on wool tops and some other commodities. That is the fact. But the difficult task confronting the Secretary of the Treasury and the Treasury Department is to determine whether that fact constitutes a bounty or grant or whether, for example, the higher dollar rate of 7½ pesos or even a still higher dollar rate—because there are higher dollar rates than that prevailing in Argentina, some much higher ones in the open market—whether those rates are the proper rates which would adequately move the commodities which normally would come to this market, and take care adequately of the demand for our commodities in that market.

The Argentine exchange system is a very complicated one, and is not one which the Treasury Department admires, because we do not like this mixture of rates. Our effort, bilaterally, and our effort in the International Monetary Fund, is to try to eliminate these rates.

Senator BUTLER. What is the purpose of their complicated system, different rates on the same article, for instance?

Mr. SOUTHARD. I cannot testify with respect to their purpose.

Senator BUTLER. The main purpose, of course, is to get rid of their goods, their commodities.

Mr. SOUTHARD. But the fact remains that the most important of their wool commodities has the lower rate, and that if, for example, it were to be concluded by them or anyone else that the more depreciated rates were the better rates from the standpoint of any fair economic test, or if our pressure were to bring about that result, then the consequence might quite possibly, for example, be simply to move the greasy wool rates to the 7½-peso rate. The Treasury Department has felt that it has to be very cautious and very careful in the American interest in examining that situation, to do nothing to precipitate a set of exchange rate adjustments which might not even be in the interests of, let us say, the wool industry as a whole in this country. Wool tops, as you know, are a very small percentage, an exceedingly small percentage, of the wool in all forms that normally would move to this market. We are hard put to it, Senator, to know what attitude to take to that kind of complex multiple-rate system.

If for example—and I do not like to say this on the record, Mr. Chairman.

(Discussion off the record.)

Senator HOEY. We will go back on the record.

Mr. SOUTHARD. Yes. But we have not reached or made a determination, Senator Butler, but certainly that does not mean that it has not been actively examined in the Treasury Department.

Senator BUTLER. Well, there is a provision in the existing law for the imposition of countervailing rates.

Mr. SOUTHARD. That is true and, as I said in what I read of my prepared statement, where there is a cash grant or cash bounty there is no difficulty whatever in arriving at a determination; but, when we find multiple rates being used, then the task is to determine whether there is a bounty or grant in the sense of the law.

Senator HOEY. You may proceed with your statement, Mr. Southard.

Mr. SOUTHARD. I believe, Mr. Chairman, I had completed the second paragraph.

Senator HOEY. Yes.

Mr. SOUTHARD. I am sure you will appreciate, however, that the problem is greatly complicated for us by the growth in recent years of complex systems of multiple export or buying exchange rates. In effect, a multiple export rate means that the country is unable or unwilling to place a definite single value on its currency.

Let me make it perfectly clear that the United States Government does not like multiple exchange rates and has worked constantly to simplify and abolish them wherever the circumstances would permit This is also the constant effort of the International Monetary Fund in which the United States actively participates. Some progress has been made in this direction, albeit slow progress, and we are hopeful of making further progress as world conditions make it possible. The committee is well aware of the unsettled economic, political, military, and financial state of the world today. In circumstances such as these, financial and monetary practices become partlicularly difficult to deal with, making the economic implications of systems of multiple rates especially complex and diverse.

When a country shifts to a system of multiple rates, there may be a partial devaluation of the currency of the country in question or there may be a deliberate taxing or other burdening of a portion of the exports, or both of the elements may be present. If a bounty or grant is involved, it will be in some of the cases of partial devaluation.

The existence of two or more export rates of exchange automatically opens up the question of what is the appropriate rate, deviations from which may involve unfair trade practice. A determination of the appropriate basing point or bench mark becomes necessary, and until that determination can be made it is simply not possible to find out whether the foreign country is engaging in that kind of unfair trade practice which the law was intended to offset by the instrument of countervailing duties.

It is not proper to adopt as a general rule that the least devaluated rate is the benchmark. If a country were to devalue its currency and establish a more realistic unitary rate the law, of course, does not require the imposition of countervailing duties on all exports from such a country merely because such exports would be enjoying better rates of exchange as compared with the rates formerly in effect. However, there are many cases where for various reasons countries have not found it feasible to resort to general devaluation as a means of

solving their currency problems. What they do as an alternative is to devalue their currencies, so to speak, with respect to particular exports. Do the new rates in such cases always represent bounties or grants conferred upon such exports? The Treasury Department thinks not.

Thus far I have stated the problem in general terms. I should now like to relate it to the very real and very important economic developments which are taking place in the world around us. There are several characteristics of this world which impinge directly upon the problem at hand.

One is that countries often find it difficult or impracticable to levy income or other adequate taxes upon important segments of their economies. In these circumstances these countries often find it much easier to collect revenue through their central banks and exchange authorities than through their internal-revenue departments. While we may wish that such circumstances did not exist we must recognize that they do exist in many countries. We must recognize also that multiple rates of exchange may provide a very effective instrument of taxation in countries with relatively undeveloped tax systems. The process is quite simple. A country whose currency is overvalued may devalue its rate of exchange for certain export commodities, but retain the old rate on those commodities which it desires to tax. This means that exporters of commodities on which the burden is placed receive fewer units of local currency for every pound or ton exported than they would receive if they were permitted to operate at the newer and more realistic rate of exchange. Since the Government pays out a smaller amount of money to these producers than it would otherwise, it is able to provide a very important source of revenue for the National Treasury. This can also be an effective means of controlling the inflationary effects of large earnings in a few export industries at a time when other export industries are not booming.

I move now to another characteristic of the modern world which impinges directly on the problem before us. Since the outbreak of World War II and in some cases even more severely since the end of that war, many foreign countries have found it exceedingly difficult to maintain stable economies and balanced international payments. Relatively few countries of the world have gone through this whole period without balance-of-payments' crises and severe depletion of their foreign exchange reserves. The devastation of the war, the relative lack of materials, and the pressure of inflation in many degrees and of many kinds, has placed a great many foreign countries in a very difficult position. We have tried to do our best to assist those foreign countries in their efforts to improve their position. The world is substantially better off than it was at the end of the war and in the years immediately following the war. Increasing efficiency, increasing production and successive devaluations of foreign currencies have aided materially in stabilizing the situation. Nevertheless, we must admit that today there are still problems of adjustment which countries must find ways of dealing with. Given this fact and given the fact that multiple rates provide an avenue for partial devaluations which in many instances causes less repercussion than more complete devaluations, it is not surprising that there has been an intensification of the use of multiple exchange rates in the period since 1939.

I should like now to indicate how these factors of the modern world make it extremely difficult for the Treasury to arrive at simple conclusions respecting the levying of countervailing duties. Multiple rates of exchange are utilized for various reasons. They provide a means of partial devaluation from an overvalued rate of exchange. In many countries they provide a convenient and efficient means of collecting revenue from important sectors of the economy. In others they are an important means of countering inflation. In many foreign countries we can point to concrete examples of the use of multiple rates of exchange for the purpose of achieving one or more of these results.

This is not to say that multiple rates of exchange may not be used in order to bestow bounties or grants. As I have indicated earlier, the Treasury has always felt that it is possible for a foreign country to utilize a multiple exchange rate system in order to bestow such bounties or grants. For example, a country whose prevailing export rate of exchange fairly reflects its internal costs and degree of efficiency, could institute a more favorable rate for the specific and express purpose of giving one of its export commodities an unfair competitive advantage in entering the markets of the United States. But, given the extreme complexity of the motives and economic results attaching to the use of multiple rate systems throughout the world, and given the tendency since the war for currencies to be overvalued rather than undervalued by their basic rates of exchange, and given the fact that many countries retain their base rates of exchange so as to acquire revenue or penalize the production of commodities on which they do not wish to be too dependent, it is extremely difficult in these circumstances to determine that a system of multiple rates of exchange bestows a bounty or grant.

The Treasury submits that the adoption of a rigid formula or rule of thumb is not well calculated to deal with these complex situations. Application of any such rigid formula would almost certainly result in some determinations which Congress did not intend and would not wish. For this reason provisions such as those proposed in S. 2668, Senator Mundt's bill, do not appear to us to provide a suitable procedure for operating in this field.

Section 2 (c) of the proposed Customs Simplification Act provides in substance for a determination of injury to American producers before countervailing duties may be imposed. In every matter relating to the cost of imported goods there are conflicting interests. Particularly where raw or semiprocessed commodities are concerned, the American processor has an active interest in obtaining his imports at the lowest cost possible. In many cases keeping these costs at a minimum permits the American producer to pass the savings on to the ultimate consumer. On the other hand, American producers facing competition from imports have a legitimate interest in making certain that the imports enter the country under conditions of fair competition. The countervailing-duty provisions of the act are intended to prevent unfair practices arising out of subsidies, where they cause or threaten to cause injury to American producers. Where they do not cause injury to American producers, then the resulting lower prices to American consumers (including consumers who use imported raw materials) will benefit the United States. For these reasons the Treasury has sponsored and strongly supports the proposal that the

amendments to the Tariff Act make provision for the determination of injury as one part of the process leading up to the imposition of countervailing duties.

That completes my formal statement, Mr. Chairman.

Senator HOEY. We are glad to have your statement. Any further questions, Senator?

Senator BUTLER. Mr. Chairman, I appreciated the statement by Mr. Southard and his explanation in answering by questions before the statement was read to the effect that the Secretary of the Treasury may be planning action on the imposition of countervailing duties, but certainly it is not getting action fast enough to do us the good that I would like to see done.

Now, Senator Saltonstall just sent me a wire that came to him this morning, which I think I would like to put in the record.

Senator HOEY. That may be answered.

Senator BUTLER. It is addressed to Senator Saltonstall from Boston, dated the 21st of April, and it is as follows:

> The Secretary of the Treasury is to appear tomorrow, Tuesday, the 22d, before the Senate Finance Committee in the court of the customs simplification bill H. R. 5505. The Governments of Argentina and Uruguay are subsidizing their wool top manufacturing industry, and these tops are being sent into the United States to the detriment of the New England wool top manufacturing industry. Efforts have been made unsuccessfully by all segments of the wool industry in this country to have the Treasury Department impose countervailing duties on such imports as it is required to do by section 303 of the Tariff Act of 1930. Could you arrange to attend the hearing tomorrow, Tuesday, and interrogate the Secretary as to why the Treasury Department has imposed countervailing duties or could you arrange to have some member of the Senate Finance Committee interrogate the Secretary on this subject. We are taking the liberty of sending a similar wire to Senator Lodge.

It is signed by Mr. Ralph J. Keltie, president, Boston Wool Trade Association, and Hugh Monro, president, National Trade Wool Association.

That does not give the information that I asked for a while ago as to why the Secretary has not imposed countervailing duties on the Argentine, but Mr. Southard may be correct in his statement that there is not very much movement of wool tops from Argentina at this time.

I have just been advised that there is a heavy movement of wool tops from Uruguay, a close neighbor of Argentina, and it seems important to me that the Treasury do something in cases of this kind rather than delaying indefinitely action which, in effect, prevents the benefit that we should be getting from the laws that were passed.

Mr. SOUTHARD. Senator, could I mention just a word on Uruguay? On the 5th of April, a decree was issued in Uruguay which bars all exports of wool tops pending further examination by Uruguay of certain aspects, and I believe——

Senator BUTLER. That is an action taken by the Treasury looking toward the imposition of a countervailing duty?

Mr. SOUTHARD. No, that was an action taken by the Uruguayan Government in barring all exports of wool tops to the United States from Uruguay. The wool tops trade also are aware of that, and while we do not ourselves know what Uruguay then might do, at least for the time being Uruguay has taken positive action, which means that there will be no further wool tops moving. I again say that that does not speak on the particular question of——

Senator BUTLER. I get the impression that the wool trade industry, which centers in Boston, the manufacturing industry, is quite interested, and apparently they are of the opinion that I have been trying to give here, that the Treasury has been very delinquent in imposing countervailing duties up to date.

Senator HOEY. Any further questions?

Senator BUTLER. That is all I have, Mr. Chairman.

Senator HOEY. Thank you, Mr. Southard.

Mr. Graham, would you like to proceed with anything further?

Mr. GRAHAM. Mr. Chairman, following Mr. Southard's observations about the injury aspects, if it meets with your approval and pleasure, I would like to read and submit for the record the following statement.

Senator HOEY. You may proceed.

Mr. GRAHAM. Mr. Chairman and members of the committee, you may have noted that the United States Tariff Commission has submitted to this committee a memorandum analyzing the various provisions of H. R. 5505. A similar memorandum was submitted to the Committee on Ways and Means of the House of Representatives. In both these papers the Tariff Commission points out that the requirement that the Treasury Department should determine whether particular imports cause injury to domestic industry is an unusual provision. In all other cases where a determination with respect to the economic effect of imports upon domestic production is required to be made the findings is made by the Tariff Commission.

Subsequent to the time of the hearings, the Treasury Department has been in contact with the Tariff Commission to further explore this subject, which, on its face, has considerable merit. These discussions, in our opinion, have been helpful and fruitful. We have reached an informal agreement with the Tariff Commission which, we believe, can be formalized into appropriate language and, with your approval, could be considered during these hearings as amendment to section 2 of H. R. 5505. The net effect of the proposal is that the Tariff Commission would be responsible for establishing injury to domestic producers in cases involving either antidumping or countervailing duty statutes. On the other hand, the Secretary of the Treasury would continue to be responsible for determining whether or not a bounty exists in countervailing duty cases, the extent of such bounty, if any, as well as the determination whether or not a sale is made at less than fair value in antidumping cases.

Senator HOEY. Have you any further statements, Mr. Graham?

Mr. GRAHAM. I do not, Mr. Chairman.

Senator HOEY. At this time?

Mr. GRAHAM. Not at this time.

(The prepared statement of Mr. Graham is as follows:)

STATEMENT OF ASSISTANT SECRETARY GRAHAM

Mr. Chairman and members of the committee, I appreciate the opportunity which you have afforded the Treasury to present its views on H. R. 5505, the proposed Customs Simplification Act of 1951.

H. R. 5505 is sponsored by the Treasury Department. It has to do with procedure in administering the customs laws and not with rates of duty, and it is not intended to effect any substantial change in customs revenue. We believe that its enactment will enable customs to render improved service to the public and to reduce its own operating costs. We further believe that the net effect of the

enactment of H. R. 5505 would be to remove many unnecessary procedural restrictions on imports.

Most of the provisions of H. R. 5505 relate to the commercial importation of merchandise from foreign countries. Therefore, I should like to mention, in layman's language, the process which is involved in a commercial importation. This not only will help to identify the steps which must be taken by the importer and by customs, but also will clarify some of the terminology which is used in customs commercial transactions.

Let us assume that the importer has purchased merchandise in Europe which will require the payment of duties after it has been landed in the United States. Let us further assume that the merchandise is on a ship arriving at the port of New York. The master of the vessel has already prepared a manifest, which is a list of the articles of merchandise. This serves as the first paper control of the merchandise coming into the United States.

After the vessel arrives at New York, the importer, or a customhouse broker acting for him, files an entry at the customhouse. This entry is a list of the merchandise which the importer wants to clear through customs. It contains detailed information concerning quantities, value, country of exportation, and other information which will be needed by customs. This entry also has the importer's estimate of the amount of customs duties which will have to be paid on the merchandise. The entry officer examines these computations and, if the estimated amount appears to be correct, that amount of money is collected from the importer. If obvious errors have been made in estimating the amount of duty due, the entry officer requires the form to be revised and the correct estimated amount of duty is collected. On the basis of this entry, a permit is issued which tells the customs employees on the dock what merchandise may be immediately released to the importer and which packages are to be held for opening and detailed physical examination. Generally speaking, the numbers of packages to be retained for physical opening and inspection would be no more than 1 package out of each 10 of a similar lot. The customs employees checks to see whether the number of packages landed from the vessel agrees with the number shown on the manifest and listed by the importer on the entry. Those packages which have not been selected for examination are usually immediately released to the importer, after their number has been verified, and go immediately into the course of trade.

The packages selected for examination are, in most cases, carted to the appraisers' stores. This is a building which has both office space and warehouse space in which the packages are opened and the contents are counted to see that the quantity and kind of items indicated to be contained in a particular package are actually in it.

Many rates of duty are stated as a percentage of value, and we call them ad valorem duties. To assess an ad valorem duty, customs must appraise, or value, the merchandise. Records have been carefully kept of previous shipments of the same or similar articles. Through an information exchange, value information has also been secured from the other ports throughout the United States as to the values declared by importers at those ports for like items.

In connection with the present shipment, the importer has arranged, through his foreign representative or the company from which he procured the merchandise, for an invoice. This means that the merchandise being exported from the foreign country has been described and listed and information concerning the value of the articles being exported is contained on the invoice. In many cases this invoice is a consular invoice, which is required to be certified by an American consul, who makes such verification of the information as he considers necessary. These certified consular invoices are then sent to the American importer, who supplies this value information and any other information he has concerning value to the appraiser, who, in this example, is in New York.

The valuation of merchandise is not, however, a simple process. Under the present law, which provisions of this bill would amend, there are several methods of valuing merchandise, depending on a large number of factors. The principal methods of valuation, however, are foreign value, or export value, whichever is higher. This means that, at the present time, not only must the foreign shipper and the American importer furnish information concerning both values of merchandise, but customs must make both determinations in order to value the importations at the higher of the two figures. Briefly, foreign value is the price at which the specific commodity is offered for sale in wholesale quantities on the home market, that is, in the country from which it is shipped. Similarly, the export value is the price at which this commodity is offered for sale in wholesale quantities for export to the United States. In cases where there is a doubt

as to the correctness or sufficiency of the information available, a detailed investigation by customs representatives in the foreign country is required.

The appraiser reports his findings to the collector who uses them, together with information on quantities, weights, et cetera, to make a final determination of the duties owed by the importer. If, at the time of entry, a larger payment was made than is finally determined to be due, a refund is given the importer. If, however, more duties are owing the Government, collection is made from the importer of the increased amount.

In the example which I have given, all went well. The importer did not encounter the impediments which we are trying to minimize and some of which will be mentioned in this statement.

This proposed legislation is part of the over-all management improvement program of the Department which was instituted by Secretary Snyder when he became Secretary of the Treasury.

The Secretary desired that an outside management firm of industrial engineers make an evaluation of the customs service. The Congress concurred, and the Eightieth Congress, first session, appropriated a specific sum of money for this purpose in 1947. After careful study the firm of McKinsey & Co., of New York, was selected to do this work. In the letter of authorization the objectives of the survey were stated to the management firm as follows:

"To study the operations of the Bureau of Customs and the customs service with a view to promoting the efficiency of operations to the end of performing the duties and responsibilities with which the customs service is charged by law and in a manner that will protect the revenues and afford the greatest degree of service to the public. The end objective is to accomplish these results with the greatest degree of economy and the least possible cost to the Government.

McKinsey & Co., after completing their study, made a report which stated, among other things, that "all things considered, the customs service is as well operated as the average business concern. However, we believe it can be improved." The report made many suggestions and recommendations. For statistical purposes we considered that the report contained 178 recommendations. The majority of these recommendations, or 142 in number, were termed administrative. That is to say, the recommendations, if approved, could be placed in effect by order of the Secretary, or the Commissioner of Customs, as the case might be. On the other hand, the recommendations which would require changes in existing law, were termed "legislative." There were 36 such recommendations. A steering committee was appointed by the then Under Secretary A. L. M. Wiggins, consisting of men selected from the Department, the Bureau, and the field, to direct the study. The report was then divided into 15 functional areas, and a task force leader was assigned to each area. Qualified people were then chosen from both the headquarters and field offices to assist the leader.

A majority of the administrative proposals were accepted and put into effect. Some were found to be undesirable. Many required a partial modification of the proposal so as to be more practicable or workable. A box score of the administrative recommendations follows:

Total administrative	142
Approved and in effect	97
Approved and in process of becoming effected	6
Miscellaneous (additional funds required, etc.)	9
Under consideration	2
Not adopted	28

With respect to the 36 legislative proposals contained in the McKinsey & Co. study, the following tabulation shows the action taken:

Incorporated in H. R. 5505	21
Became effective due to passage of other legislation after the McKinsey report	21
Covered by pending legislation, other than H. R. 5505	5
Existing laws permit accomplishment	2
Under study	3
Rejected	3
Total	36

As you know, the customs laws are usually specific and detailed as to what can be done by a customs officer in administering the Tariff Act. Therefore, it

is generally conceded that there is a great deal of technicality involved in customs, and the Treasury and customs people are here to assist in answering any questions which you may have in mind. However, I believe that your valuable time will be better served if I may confine my comments to the more general features of H. R. 5505, from the customs viewpoint.

Section 13 is undoubtedly the most important single provision of this bill. It amends section 402 of the Tariff Act which tells the customs appraiser how to find the value of imported merchandise. As I already have explained, many duties are stated as a percentage of the value, so that the value has to be known before the duty can be assessed.

The appraiser, in determining value under the present statutory alternatives, must first ascertain both the foreign value and the export value and then appraise the merchandise according to whichever is higher. It will be observed that this valuation is made with reference to prices in both the home market and the export trade, of the particular country from which the merchandise is shipped to the United States. Generally speaking, the value of the bulk of all dutiable imported merchandise is determined in this manner rather than by value in the United States.

Often there are various technical restrictions involving either the "foreign value" or "export value" determinations, and, if the appraiser cannot ascertain such values, he must then appraise according to "United States value." In essence, this value is based on offers of the imported product in the United States. If this method does not produce the determination of value, then the appraiser must resort to what the present statute terms "cost of production." We are suggesting a change of name to constructed value as more descriptive of the process of determining this type of value in the foreign country.

It will be noted that the appraiser must know a great deal about offers to sell or sales of the same or like merchandise in the home markets of the country from which the merchandise is shipped, in order to determine "foreign value." In order to secure this information, there is often involved a large expenditure of time and effort on the part of the importer in finding out about transactions in a foreign country which he may know nothing about. Likewise, there is an obvious and inherent difficulty in requiring an American customs official, or an importer, to obtain detailed information as to business operations in a foreign country.

Furthermore, the "foreign value" standard sometimes produces the inequitable result that exports from a small country have a higher valuation for customs purposes than the same exports from larger countries. This happens because the home market in small countries is not large and the usual wholesale prices in that country may not reflect the discounts available for large-quantity sales to importers in the United States. Another difficulty is that the prices in the home market are frequently enhanced by internal taxes which do not apply to the merchandise when exported, and recent court decisions do not completely remove the doubt as to when these taxes have to be added in order to arrive at the dutiable value.

The bill proposes to meet these problems by making the so-called export value the method which the appraisers must employ whenever they are able to do so. Failing in this, they are to use the United States value. We propose to eliminate the foreign value as a method of appraisement entirely. This change was strongly recommended by McKinsey & Co. The advantage of this will be that the information necessary to make an appraisement will usually be available to the appraiser in the United States. Either the very merchandise he is appraising will have been freely offered so that the sale will be a satisfactory basis for appraisal or he will have knowledge of the prices paid for similar merchandise imported by other parties.

Section 13 contains a number of other technical provisions which are designed to make it easier to find a value and to make the value when found more commercially realistic. One of the main objections to our present value method is that it takes so long to find the value, and we are confident that if this bill is enacted appraisements will be made much more rapidly.

Next I would like to invite your attention to section 17 of the bill, which deals with the amendment of entries and undervaluation duties. Under present law, whenever the appraiser finds a value in excess of the value at which the importer entered his merchandise there must be assessed under valuation duties, which are measured by the difference. They are heavy monetary exactions and, from the importer's point of view, actually penalties, although not so designated in the statute. Under present law, the importer has a chance to escape the undervalua-

tion duties if the appraiser tells him what advance he proposes to make in the value and if the importer amends his entered value to correspond. Customs regulations permit appraisers to furnish this information if the importer has cooperated by supplying all the information in his possession which will help the appraiser. Furthermore, even after the undervaluation duties are assessed the importer can petition the Customs Court, which will remit them if the importer has acted in good faith.

The trouble with this procedure is that the provisions to protect the innocent importer are not sufficient to prevent undervaluation duties from being assessed in many cases where they are not deserved. To avoid them the procedure is extremely cumbersome and roundabout and involves a lot of unnecessary paper work in amending entries, which is a burden both on the importer and on the collectors of customs.

Section 17 seeks to eliminate both the amendment of entries and the circumstances which now make amendments necessary. The importer who cooperates by supplying all information in his possession or available to him will be no longer subject to undervaluation duties, even if the appraiser has advanced the entered value. Furthermore, if the appraised value should happen to be less than the entered value, he will get the benefit of the difference. Under present law, if the entered value exceeds the appraised value, the entered value governs and the importer gets no benefit from the lower appraisement. Therefore, amendment of entries under the bill ceases to have any legal consequence and can be done away with as unnecessary.

Section 17 further provides that when undervaluation duties are assessed they are subject to protest and review procedure the same as any other duties. Consequently, if the importer believes that the appraiser has been arbitrary in his demands for information, he can obtain administrative and judicial review. The bill also eliminates the presumption of fraud which arises under present law if the undervaluation is 100 percent or more. We believe that such undervaluations are frequently innocent and result from misunderstanding of the applicable method of valuation, and therefore no presumption is justified. Of course, if there is actual fraud, other provisions of the customs laws can be invoked.

We believe that there will be three principal advantages to be derived from these provisions. First, the customhouses will not be cluttered up with useless amendments of entries. Second, importers will not be assessed undervaluation duties unless they have in some way been derelict in performing their obligations under the law. Third, in cases of doubt the question whether or not undervaluation duties have been incurred will be determined much more quickly and cheaply. The final word still remains with the Customs Court.

Another provision of the bill, section 3, deals with certain special marking requirements. There is a provision of the customs laws which requires that all imported merchandise be marked to show the country of origin, with certain obvious exceptions such as bulk goods. We are not recommending any change in this provision. Elsewhere in the customs laws there are certain additional requirements. For example, let me invite your attention to paragraphs 354 and 355 of the Tariff Act of 1930. They require that most knives when imported be marked with the name of the maker or purchaser, and beneath the same, the name of the country of origin, die sunk conspicuously and indelibly on the blade, or on the shank or tang. It is not sufficient if the name of the maker be on the other side of the blade from the country of origin, nor may these markings be added after importation. In actual practice these provisions have been found to constitute traps for inexperienced importers seeking to market new lines of merchandise in this country. Moreover, they serve little useful purpose because the general marking requirements would insure that consumers would know what was the country of origin. These special marking requirements have no provision for unusual or hardship cases. Consequently, they often produced irritating wrangles such as occur when an American doctor orders specially designed surgical instruments abroad and then finds that the special marking requirements prevent their coming in.

The next section I would like to discuss is section 15, certified invoices and informal entries. I have already explained what an entry is in customs language. Present law permits the entry of a shipment valued at $100 or less to be "informal," which means that it is on a special simplified form and is filled out by the customs inspector for the importer. The proposed bill would increase the dollar ceiling on such informal entries to $250, and, by an amendment introduced in the House, would permit informal entries for certain importations for schools, churches, and libraries, principally of books and pictures, without limitation as to

value. Formal entries require an amount of detail for the importer and for the customs which is excessive for shipments of under $250 in value. The revised section will permit small value shipments to be handled a great deal faster, to the benefit of both the importer and the Government.

Next, I would like to refer to section 20 of the bill, which deals with conversion of currency. In recent years we have had a great deal of difficulty in operating satisfactorily in cases where it is necessary to convert a foreign currency into dollars for some customs purpose. We have to do that whenever we appraise merchandise which is bought by payment in a foreign currency. Almost all foreign value appraisements are necessarily in the foreign currency and have to be converted. If we eliminate foreign value, this problem will become less acute. The problem will not be eliminated, however, for the determination of export value will require a conversion of foreign currency whenever the applicable export price is in a foreign currency. In recent years, conversion troubles have multiplied as countries have imposed exchange restrictions, have permitted black markets to develop in their currencies, and have even developed multiple rate currencies. They are systems whereby an exporter who sells one product for dollars will get more of his own currency per dollar than the exporter who sells some other product. In other words, there are several exchange rates for the currency, depending on the commodity to be exported.

The first part of section 20 repeals the obsolete provision of an act of 1894 which still requires the Secretary of the Treasury to publish periodically the gold content of foreign coinage. This information was intended to be used for customs purposes but is now useless for that purpose, since foreign countries either do not announce the gold content of their money, or, if they do, the figure has no significance in international trade. Practically all currency conversions for customs purposes today are made under the provisions of section 522 of the Tariff Act, which requires the Secretary of the Treasury to make use of conversion rates certified daily by the Federal Reserve Bank of New York whenever the rates actually employed in commercial transactions vary by more than 5 percent from the gold content rate. Practically all commercial rates do vary by more than 5 percent, and this provision thus applies.

Section 20 of the bill will permit the Customs Service to employ as the basic conversion rate the par values of foreign currencies maintained pursuant to the Articles of Agreement of the International Monetary Fund. Some countries do not maintain such a par value, and, for these countries, the conversion rate is to be determined by the New York buying rate as certified by the Federal Reserve bank, just as at present. The advantage to be derived is that, whenever a par value is maintained, a constant figure can be used, and it will not be necessary for customs officers to follow the daily minute fluctuations that occur in the buying rate, nor will it be necessary for the bank to supply certifications with respect to these currencies which are maintained at par. When multiple rate currencies exist, the bank is to certify these rates and the Secretary is to apply, for customs purposes, the rate or rates which reflect effectively the value of that currency in commercial transactions. This follows the rule set down by the Supreme Court in *Barr* v. *United States*. When a country having a par value established pursuant to the fund articles permits the actual commercial rate of exchange to deviate from that par, the Secretary likewise is to use certifications furnished by the bank whether or not the deviation is recognized as valid under the fund articles. The intent is that the rate employed for customs purposes shall always be the realistic commercial rate actually applicable to imports of the class of products such as the product undergoing appraisement. Experience has shown that par values established with the International Monetary Fund are dependable as a bench mark in the sense that the rates actually employed in commercial transactions do not deviate substantially from them. The provision for cases of deviation will have to be invoked, we hope, in exceptional cases only.

I come now to section 19 which would permit the correction of errors and mistakes of importers or the Customs Service in customs transactions which are adverse to the importer and which cannot be corrected under existing law. In the thousands of customs transactions, many such mistakes occur which should be corrected in order to do justice to the importing public. The Government has no interest in retaining duties which were improperly collected as a result of clerical error, mistake of fact, or inadvertence. The inability to make refunds in such cases results in great dissatisfaction and a feeling of injustice among importers, particularly among those who are not regularly engaged in importing. Under existing law, it is impossible to correct, by administrative

action, any error in appraisement, irrespective of the nature of the error. Under this section, certain errors in appraisement which result from inadvertencies and clerical errors may be corrected by administrative action. This will eliminate the necessity for assessing duties in many instances on merchandise far in excess of its admitted value.

The six provisions which have been discussed above constitute the most important aspects of H. R. 5505 as they relate to commercial transactions from a customs viewpoint. There were two provisions in the original bill which apparently caused some concern to certain elements of American industry. Briefly, these two provisions related to what is known as the American selling price method of valuation and the basis for taxing distilled spirits. Both were eliminated by the House. Although such provisions had the merit of producing simplification by bringing about uniformity in customs administration, the Treasury does not propose that they be reinstated in the bill by this committee.

I have endeavored to high light the principal provisions of this bill which affect foreign trade. Other provisions of the bill, such as the restatement and simplification of the statutes relating to the personal effects of travelers, can be discussed in such detail as your committee may desire. I wish to assure you that the personnel of the Treasury is available at all times to assist your committee in its consideration of this bill.

Senator BUTLER. Thinking a little further about what Mr. Southard said about shipments having been stopped from Uruguay by action of the Uruguayan Government, I wonder if that could have been a result of the prospect of these hearings, and that shipments will be resumed pretty shortly when Congress calls an end to the hearings or does something?

Senator HOEY. Have you any information on that subject?

Mr. SOUTHARD. Mr. Chairman, I cannot supply any further information. We know only that they took the action on the 5th of April.

Senator BUTLER. It is more than likely that it was due to the threat of action up here by Congress, I think. I do not see any other reason.

Senator HOEY. Do you have any information on that subject?

Mr. SOUTHARD. No further information than I have already indicated. It is known to them that this whole problem is under careful study in the Treasury Department.

Senator BUTLER. There has been considerable agitation in various segments of the wool trade industry on account of the lack of action by the Secretary of the Treasury. They know about that, of course, down there. That is all, Mr. Chairman.

Senator HOEY. Thank you, Mr. Southard.

Mr. Graham, are these gentlemen who are accompanying you witnesses, and do they have any special statements to make, or are they here merely to answer questions?

Mr. GRAHAM. Mr. Chairman, they are here to serve the pleasure of the committee in any questions that you might have. As you know, the customs procedures and laws are very technical, and they are well qualified to speak in the words of art which pertain to customs, so that if there are any questions here that——

Senator HOEY. We appreciate their presence, and so do the members of the committee, of Mr. Charles McNeill, assistant general counsel; Mr. W. R. Johnson, assistant to the Commissioner of Customs; and Phillip Nichols, Jr., general counsel of the Renegotiation Board.

Mr. NICHOLS. You understand, Mr. Chairman, that the Renegotiation Board is not taking part in these hearings. I am just on loan from them.

Senator HOEY. Yes.

Mr. NICHOLS. The Board itself is not participating.

Senator HOEY. Yes; I knew that the Board itself was not participating.

In the meantime, we will take the next witness, and then we will see if you gentlemen have any answers to questions. You gentlemen just remain to see if there is anything further.

Next is the Honorable Harold F. Linder, Deputy Assistant Secretary of State for Economic Affairs. Is Mr. Linder present?

Mr. GRAHAM. Mr. Chairman, may I say that Mr. McNeill and Mr. Johnson will be available at all times to serve your committee, and in case of any special requests we can also have Mr. Nichols present.

Senator HOEY. Thank you very much.

Mr. GRAHAM. I want to thank you, Mr. Chairman, and the members of your committee, for your courtesy in receiving us.

Senator BUTLER. I think it would be interesting, Mr. Graham, if you could include a little statement in here, that I think would be easily available, as to the amount of wool that is being held back in Uruguay and Argentina for export. They do not eat it. They are going to export it at some time.

Mr. GRAHAM. We will endeavor to find that for you.

Senator HOEY. If you can find that information, it will be inserted in the record.

Mr. GRAHAM. Yes, sir.

(The information referred to is as follows:)

As of March 31, 1952, according to information received from the United States Department of Agriculture, it is estimated that stocks of wool in Argentina and Uruguay were approximately 580 million pounds and 170 million pounds, respectively, on a greasy basis. Of these stocks roughly 500 million pounds and 160 million pounds, respectively, appeared to be available for end-of-season carryover and for exportation to all countries. It is believed that not more than approximately 70 to 75 percent of the Argentine stocks and 80 to 90 percent of the Uruguayan stocks are of qualities that could be made into tops, the balance being of coarser qualities, or carpet type wools. The above estimates of stocks as of March 31 do not include quantities afloat or in warehouses in the United States.

Senator HOEY. We thank you very much, Mr. Graham.

Mr. GRAHAM. Thank you, Mr. Chairman.

Senator HOEY. If the committee wishes additional information, you will furnish it to us.

Mr. GRAHAM. Thank you, sir.

Senator HOEY. Our next witness is Mr. Harold F. Linder.

STATEMENT OF HAROLD F. LINDER, DEPUTY ASSISTANT SECRETARY OF STATE FOR ECONOMIC AFFAIRS, DEPARTMENT OF STATE

Mr. LINDER. My name is Harold F. Linder. I am Deputy Assistant Secretary for Economic Affairs in the Department of State. I joined the Department in this capacity in February 1951. Before coming with the Department, my career was entirely in private business, except for a period of service in the Navy. At present, I am on leave of absence from my position as president of an investment company.

Representatives of the Treasury Department have already commented on the technical provisions of this bill. What I should like to comment upon briefly is the way in which this bill bears on our economic relations with other countries.

In my own experience with the representatives of other countries, I have been impressed with the importance they attach to this project of American customs simplification. The reason for this strong interest by foreign countries in what seems to be simply a technical project is not hard to find. It arises out of the critical importance which the export trade has for these countries. Take Canada, for example. Of every $100 of goods Canada makes, she exports about $22; for Great Britain, the comparable figure is $21; for Belgium, $30, and so forth. This means, as far as these countries are concerned, that their economic existence in some ways depends on their ability to export. In that kind of situation the treatment of their goods in foreign customhouses is a matter of prime political and economic importance.

The relationship between a country's trade and its political orientation was a factor very much in the minds of the Soviet officials who planned the Moscow Economic Conference. They were very much aware of the fact that one of the most effective gestures of good will which one country can extend to another is an offer to take its goods on a reasonable basis. They were aware of the converse proposition as well—that there are few things in international relations which generate political hostility quite as rapidly as an unwillingness to give another country a reasonable opportunity to trade. They already realize what we are only beginning to learn—that every national policy affecting foreign countries is a potential weapon in the cold war between the East and the West.

When one tries to appraise the significance of the customs-simplification project in this context, I think it is important to realize that the cumbersome and inequitable customs procedures with which this bill deals create rather a different reaction among exporters and importers than the more apparent forms of trade barriers such as tariffs. These customs procedures grew up in piecemeal, patchwork fashion over the years, as one current problem or another seemed to need special attention. In time the problems disappeared, but the provisions of law designed to deal with them did not. To the prospective exporter, the procedures now seem to have no apparent rhyme or reason. When incomprehensible procedures of this sort operate to prevent a product from being imported, the experience leaves in the businessman a sense of frustration and resentment, which inevitably is reflected in the attitude of his government.

However, the bill is important, not only for its effect upon the attitudes of foreign countries but also for its bearing on the immediate problems which American exporters and importers face in their day-to-day business. The importance of simplifying import and export procedures from the businessman's point of view is indicated by the heavy emphasis which business groups concerned with international trade have placed on this objective. Business associations such as the International Chamber of Commerce have devoted a very considerable amount of time and effort to the streamlining of these procedures, both here and abroad.

The sort of reform which such business groups hope to achieve in this field is in keeping with our objectives as a nation in the international trade field. For years, the United States has sought to reduce the degree of interference which governments have placed in the way of business enterprises engaged in international trade. Undue governmental interference, cumbersome administrative procedures,

and red tape do not provide an encouraging climate for private enterprise in international trade. On the contrary, they tend to foster the growth of governmental trading. The simplification of American procedures and the elimination of American red tape would be the strongest kind of affirmation of faith in our own preachments.

In the end, our action in simplifying American precedures is likely to help our businessmen not only at home but also in foreign countries. The improvement of our practices should help to bring about reforms in the customs administrations of other countries and to make life abroad somewhat easier for the American exporter. Conversely, our failure to move ahead in this field may well lead to backsliding on the part of other countries in this field. Any such trend, which could easily develop, would end up with all of us the losers.

Canada is a particularly good illustration of this last risk. A few years ago, the Canadians simplified many of their customs procedures in the hope and expectation that the United States would do likewise, and that a mutually profitable trade between our two countries could be facilitated. She developed a more equitable basis of valuation for customs purposes, and increased the extent to which importers could get remedies in the courts from the decisions of customs officials. However, the Canadian Government has been under very continuous pressure to undo its reforms, because the United States has not so far removed some of the inequities which have plagued Canadian exporters to this country.

I have so far been stressing what this bill does. Let me conclude by mentioning what it does not do. This bill does not alter the tariff rates which now afford protection to domestic industry. It does not in any way threaten our industries. It does, however, eliminate some of the trade barriers which now exist in our customs practices and which in many cases were not originally intended by the Congress.

In conclusion, I want to record the Department's strong endorsement to the bill. The bill serves the interests of the United States as a whole and merits the favorable consideration of this committee.

Senator HOEY. Mr. Linder, we are very glad to have had you appear.

Mr. LINDER. Thank you, sir.

Senator HOEY. We are not very many of the committee present this morning but, of course, it will all go in the record.

Senator George, who is absent, asked me to hold the meeting. The committee will examine the record in detail. We are very glad to have your statement. Is there anything further?

Mr. LINDER. No; there is nothing further, Senator.

Senator HOEY. We appreciate your appearance.

Senator George has received a large number of communications, Senator Butler, bearing on this, from different companies, and I am going to submit these to the reporter, a list of them, to be included in the record. They are letters and statements from the following: Sandoz Chemical Works, Inc.; California Stevedore & Ballast Co.; Tacoma Vegetable Oils, Inc.; Chamber of Commerce of the United States; Williams, Clarke Co., customs brokers; National Foreign Trade Council, Inc.; Illinois Manufacturers' Association; the Toilet Goods Association, Inc.; Close & Stewart, customs brokers; the Chamber of Commerce of Kansas City, Mo.; Princeton University Library; National Association of Waste Material Dealers, Inc.; the Purcell

Co., Inc., Lexington, Ky.; American Watch Association, Inc.; and R. F. Downing & Co., Inc.

All of these will be included in the record.

(The documents above-refered to are as follows:)

SANDOZ CHEMICAL WORKS, INC.,
New York 13, N. Y., January 3, 1952.

Hon. Senator WALTER F. GEORGE,
Chairman, Finance Committee, United States Senate, Washington, D. C.

DEAR SIR: We have the honor of approaching you as importers of coal-tar dyes and other coal-tar products from Switzerland during the last 30 years.

The purpose of this letter is to invite your attention to section 17 (a) of H. R. 5505 which would eliminate the right to amend entries of coal-tar products hitherto granted by the Tariff Act for sound reason.

Trusting that the representative of this company will be accorded an opportunity to appear before the United States Senate Finance Committee in the event the committee should hold hearings on H. R. 5505, we take pleasure in summing up our viewpoint, as follows:

Importers of such coal-tar products, if comparable with domestic coal-tar products, are dutiable on the basis of the selling price of the latter products in this country. If they are not comparable, they are dutiable on the basis of United States value, which is defined in the tariff. Before comparable dye tests are made, it is impossible at the time of entry to determine whether or not coal-tar dyes and other coal-tar products are dutiable on the basis of the American selling price or United States value. Therefore, it is necessary to make tests of the imported coal-tar dyes after arrival in this country before determining whether they are competitive or noncompetitive. At the present time under section 487 of the Tariff Act of 1930, the importers of coal-tar dyes and other coal-tar products are permitted to amend their entries at any time prior to the time it has come under the observation of the appraiser for the purpose of appraisement. We hold that this right should be preserved in fairness to the importers, in the interest of simple procedure and in order to eliminate unnecessary litigation.

Believe us, dear sir, we are,
Yours very truly,

SANDOZ CHEMICAL WORKS, INC.,
E. SCHNEEBERGER.

CALIFORNIA STEVEDORE & BALLAST CO.,
San Francisco, Calif., December 20, 1951.

Re proposed import tax on copra.

Hon. WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR: We take the liberty of approaching you regarding a matter of vital importance to our stevedoring industry, a large volume of which consists of copra discharging, which involved a yearly labor payroll in 1951 in excess of $491,854 and machinery owned by our company alone valued at nearly one-half million dollars.

Since 1934 coconut oil, which is derived from the crushing of copra, has been subject to an excise tax of 3 cents per pound. While this tax is burdensome to the vegetable oils and fats industry, it has not directly affected the importers and crushers of copra, since it is levied only upon the first domestic processing of the product, or in other words, the first refining of the coconut oil after it has left the hands of the importers and crushers as a crude-oil product. If the proposed legislation goes into effect, it will mean that the importer of copra will have to pay the 3 cents per pound processing tax on the oil content of the copra, which is equivalent to about $42 per long ton on the copra itself.

Enclosed herewith is a memorandum describing the background of the proposed new tax measure together with the general arguments made by the National Institute of Oilseed Products for its defeat. A further significant fact not brought out by the memorandum is that prior to World War II about 90 percent of the Philippine copra production was shipped to the United States. At the present time only about 40 percent of this copra is coming to our country, largely owing to the fact that because of the oil processing excise tax the other nations in the world are able to purchase copra at a more favorable price and are thereby

securing a larger and larger portion of the supply, to the disadvantage of our copra-crushing industry. This is a trend which is most alarming to observe and which, if it continues, will eventually force our industry into serious difficulties.

We, the California Stevedore & Ballast Co. and the Metropolitan Stevedore Co., our wholly owned subsidiary at the port of Los Angeles, therefore respectfully bespeak your kind assistance in eliminating section 22 of H. R. 5505 when this comes before the Senate Finance Committee in 1952.

Yours sincerely,

CALIFORNIA STEVEDORE & BALLAST CO.,
By J. G. LUDLOW,
Vice President and General Manager.
METROPOLITAN STEVEDORE CO.,
By J. G. LUDLOW, *President.*

MEMORANDUM

A 3 cents per pound excise tax was imposed in 1934 upon the first domestic processing of coconut oil. This tax was never a revenue measure but was rather in the nature of a protective tariff. At that time coconut oil was widely used in the manufacture of margarine, and the basic reason for the imposition of the tax on coconut oil was to protect the dairy industry.

The tax, of course, imposed an important burden upon the copra industry of the Philippine Islands and, to mitigate in some degree the effect of this burden, prior to 1946 the amounts collected by the Treasury as a result of this tax were returned to the Philippine Islands. This further demonstrates the fact that the tax was never designed as a revenue measure for the support of the Government of the United States although since 1946, and Philippine independence, the tax is no longer remitted to the Philippines but is taken into the general fund of the Treasury of the United States, a consequence never intended when the tax was imposed.

The tax has been burdensome, not only to the Philippine copra producers but to the United States producers and users of coconut oil, constituting as it does, an additional burden of cost which coconut oil must bear over other competing materials. In consequence, the copra and coconut oil industry in the United States has always been eager to see the tax removed, but no proper opportunity for its removal presented itself until recently.

In the last Congress however, a bill was introduced for the simplification of customs procedure, know as the Customs Simplification Act. It was originally known as H. R. 8304, then as H. R. 1535. The bill contained many very desirable features, but contained one section, section 23, which is very damaging to the coconut oil producing industry. That section converts the 3 cents per pound processing tax into an import tax payable upon the importation of copra, the raw material of coconut oil, as well as upon coconut oil. Its effect would be to retain the general burden of the processing tax but to shift it from the processor of coconut oil to the producer of coconut oil and the importer of copra. The National Institute of Oilseed Products, numbering among its members many copra importers and coconut oil producers, felt that this shift of the burden was unjust to the industry and should be opposed. It also felt that the change in the law contemplated by section 23 opened the door to reconsideration of the processing tax as a whole.

The NIOP therefore approached the House Ways and Means Committee with two proposals:

1. That in connection with the Customs Simplification Act, the processing tax be repealed altogether.

2. That if repeal should be rejected, section 23 of the H. R. 1535 should be eliminated altogether, leaving the processing tax in its present form and avoiding the conversion of the tax into an import tax.

The NIOP was unsuccessful before the House Ways and Means Committee. The committee took the position that a consideration of an outright appeal of the tax was not germane to the Customs Simplification Act and therefore rejected a motion that the bill be amended to accomplish such repeal. The committee also rejected the proposal of the NIOP that section 23 of the act be eliminated in its entirety, apparently failing to appreciate the serious effect upon the coconut oil producing industry of the shift of the burden. However, various members of the committee expressed themselves as beng sympathetic toward the repeal of the tax in its entirety in a bill separately introduced for that purpose.

The Ways and Means Committee therefore left section 23 unchanged, made certain other amendments in the measure and sent it to the floor of the House as H. R. 5505 in which, due to certain unimportant revisions, section 23 of H. R. 1535 has become section 22 of H. R. 5505. In this form it passed the House and has been sent to the Senate, where hearings upon it will be held early next year by the Senate Finance Committee.

It is useless to renew before the Senate Finance Committee the request for repeal of the processing tax as a whole, as a measure so affecting the revenue would have to originate in the House. However, it is definitely desirable to continue in the Senate the effort to prevent the conversion of the processing tax into an import tax, i. e., to renew in the Senate the proposal that section 22 of the present H. R. 5505 be eliminated in its entirety. The NIOP, through its legislative committee, is now making plans for the presentation of this contention to the Senate Finance Committee.

In brief, this should be of marked interest to all soap makers and users of coconut oil as it means they will have to pay the 3 cents per pound additional at the time the oil is shipped from the Pacific coast instead of 30 days after the end of the month in which it is processed. It will also obviously affect everybody connected with the coconut oil crushing industry such as steamship lines, insurance companies and labor, both in the stevedoring and the actual plants themselves.

The members of the Senate Finance Committee who will pass on this matter are Senators George (Georgia), Connally (Texas), Byrd (Virginia), Johnson (Colorado), Hoey (North Carolina), Kerr (Oklahoma), Frear (Delaware), Taft (Ohio), Butler (Nebraska), Brewster (Maine), Martin (Pennsylvania), and Williams (Delaware).

TACOMA VEGETABLE OILS, INC.,
Tacoma 2, Wash., January 2, 1952.

Senator HARRY P. CAIN,
United States Senate,
Washington, D. C.

DEAR SENATOR CAIN: At the present session of the Senate we have been advised that the Senate Finance Committee will consider H. R. 5505 dealing with changes in the processing tax on coconut oil. Under section 22 of this bill it is planned to eliminate the processing tax on coconut oil and substitute an import tax that will yield the same revenue.

The National Institute of Oilseed Products, of which we are a member, has been carrying on in an endeavor to have the coconut oil processing tax eliminated entirely. From the enclosed information you will note that this tax was started to give aid to the Philippine Islands while they were under our control. This tax imposes an unjust burden on the islands and is seriously injuring their economy. The President of the Philippine Islands has the matter up for the elimination of the tax, as well as the soap industry in this country, labor interests on the Pacific coast including the stevedoring arm, as well as many other branches of allied users of either the coconut oil or the copra meal.

At this time we are trying to arrange enough support to have section 22 of the present H. R. 5505 eliminated in its entirety. If it goes through, it will mean that every copra processor will be faced with the added cost of paying the import tax when the copra is received, rather than having the first processor of the oil pay the tax.

Since starting up in Tacoma, we have contributed considerable tonnage to American-flag vessels hauling our copra from the islands, the first year around 36,000 tons and for the first half of our present fiscal year, close to 20,000 tons. Rather than continue burdens on this strategic and critical material, we feel that efforts should be made to stimulate the use not only for the benefit of the United States, but also for the improvement of the Philippine Islands. Copra is their principal source of export revenue. The handling of the cargo is vital to our American merchant marine for home-bound cargo. Freight revenue on the oil to the consuming markets in the midwest and East is quite important to the Pacific coast railroads.

Any assistance you can give us with the Senate Finance Committee toward the elimination of section 22 of the present H. R. 5505 will be greatly appreciated.

Yours very truly,

TACOMA VEGETABLE OILS, INC.,
E. L. WESTENHAVER,
Vice President.

RESOLUTION OF THE PACIFIC COAST RENDERERS ASSOCIATION, EMERYVILLE, CALIF., SEPTEMBER 6, 1951

Whereas the Pacific Coast Renderers Association has opposed the imposition of a processing tax on coconut oil consumed in the United States, since its inception; and

Whereas it has been the firm conviction of the members of this association that such a tax was designed primarily to reduce and hinder the competition of margarine manufactured from imported coconut oil, and to aid the Philippine Islands, then under our jurisdiction; and

Whereas coconut oil has since been displaced in a manufacture of shortening and margarine by domestic cottonseed and soyabean oils, and now is confined to specialty uses in the edible field; and

Whereas a very substantial portion of the coconut oil consumed in the United States is utilized in the industrial field, primarily in the manufacture of soap; and

Whereas the lauric acid content of coconut oil is vital to the manufacture of a free-lathering, soluble soap of good quality in combination with animal fats; and

Whereas animal fats lack the virtues of coconut oil and produce an unsatisfactory quality of soap without a sufficient admixture of coconut oil; and

Whereas a mixture of animal fats and coconut oil is essential and imperative to produce a marketable soap; and

Whereas soap consumption in 1949 and 1950 was smaller than in any other years since 1921, according to the Bureau of Agricultural Economics, United States Department of Agriculture; and

Whereas a new washing compound, known as detergents and produced from byproducts of petroleum, has invaded the field of washing compounds in competition with oil- and fat-based soaps and has captured 31 percent of national sales of nonliquid soaps and detergent sales, and 50 percent of package (nonbar) soap and detergent sales in 1950, and which has been increasing at a rapid rate since 1945; and

Whereas such detergents have the virtues of free lathering and quick solubility, even in hard-water areas, which embrace a large portion of the United States; and

Whereas the basic cost of petroleum is low compared to the cost of producing, collecting, and processing of animal fats into tallow ready for the soap kettle; and

Whereas the processing tax of 3 cents per pound on coconut oil retards the use of sufficient quantities, or a suitable percentage in ratio to animal fats, by increasing the cost of soap above competitive levels and has the effect of a subsidy to detergents: Therefore be it

Resolved, That this association reaffirms its opposition to the processing tax on coconut oil, and petitions the Congress of the United States of America to repeal such tax on the grounds that the original purposes of the tax no longer exist, and its continuance is unfair to the soap industry and the producers of animal fats, 90 percent of which are utilized in the manufacture of soap, and who are now facing a constriction of consumption due to competition from petroleum-based detergents.

The secretary of this association is instructed to forward copies of this resolution to the National Renderers Association, to the national directors and regional associations, to soap manufacturers on the Pacific coast, and all other interested parties.

PACIFIC COAST RENDERERS ASSOCIATION,
LOUIS OTTONE, JR., *President.*
NELS HAMBERG, *Secretary.*
JOSEPH FIRPO,
LLOYD HYGELUND,
WILLIAM A. KOEWLER,
THOMAS N. CONWAY,
KENNETH REINHARDT,
Directors.

MEMORANDUM

A 3-cent-per-pound excise tax was imposed in 1934 upon the first domestic processing of coconut oil. This tax was never a revenue measure but was rather in the nature of a protective tariff. At that time coconut oil was widely used in

the manufacture of margarine, and the basic reason for the imposition of the tax on coconut oil was to protect the dairy industry.

The tax, of course, imposed an important burden upon the copra industry of the Philippine Islands, and, to mitigate in some degree the effect of this burden, prior to 1946 the amounts collected by the Treasury as a result of this tax were returned to the Philippine Islands. This further demonstrates the fact that the tax was never designed as a revenue measure for the support of the Government of the United States although since 1946, and Philippine independence, the tax is no longer remitted to the Philippines but is taken into the general fund of the Treasury of the United States, a consequence never intended when the tax was imposed.

The tax has been burdensome, not only to the Philippine copra producers but to the United States producers and users of coconut oil, constituting, as it does, an additional burden of cost which coconut oil must bear over other competing materials. In consequence, the copra and coconut-oil industry in the United States has always been eager to see the tax removed, but no proper opportunity for its removal presented itself until recently.

In the last Congress, however, a bill was introduced for the simplification of customs procedure, known as the Customs Simplification Act. It was originally known as H. R. 8304, then as H. R. 1535. The bill contained many very desirable features, but contained one section, section 23, which is very damaging to the coconut-oil-producing industry. This section converts the 3-cents-per-pound processing tax into an import tax payable upon the importation of copra, the raw material of coconut oil, as well as upon coconut oil. Its effect would be to retain the general burden of the processing tax but to shift it from the processor of coconut oil to the producer of coconut oil and the importer of copra. The National Institute of Oilseed Products, numbering among its members many copra importers and coconut-oil producers, felt that this shift of the burden was unjust to the industry and should be opposed. It also felt that the change in the law contemplated by section 23 opened the door to reconsideration of the processing tax as a whole.

The NIOP therefore approached the House Ways and Means Committee with two proposals:

1. That in connection with the Customs Simplification Act the processing tax be repealed altogether.
2. That if repeal should be rejected, section 23 of H. R. 1535 should be eliminated altogether, leaving the processing tax in its present form and avoiding the conversion of the tax into an import tax.

The NIOP was unsuccessful before the House Ways and Means Committee. The committee took the position that a consideration of an outright repeal of the tax was not germane to the Customs Simplification Act and therefore rejected a motion that the bill be amended to accomplish such repeal. The committee also rejected the proposal of the NIOP that section 23 of the act be eliminated in its entirety, apparently failing to appreciate the serious effect upon the coconut-oil-producing industry of the shift of the burden. However, various members of the committee expressed themselves as being sympathetic toward the repeal of the tax in its entirety in a bill separately introduced for that purpose.

The Ways and Means Committee therefore left section 23 unchanged, made certain other amendments in the measure, and sent it to the floor of the House as H. R. 5505 in which, due to certain unimportant revisions, section 23 of H. R. 1535 has become section 22 of H. R. 5505. In this form it passed the House and has been sent to the Senate, where hearings upon it will be held early next year by the Senate Finance Committee.

It is useless to renew before the Senate Finance Committee the request for repeal of the processing tax as a whole, as a measure so affecting the revenue would have to originate in the House. However, it is definitely desirable to continue in the Senate the effort to prevent the conversion of the processing tax into an import tax; i. e., to renew in the Senate the proposal that section 22 of the present H. R. 5505 be eliminated in its entirety. The N. I. O. P., through its legislative committee, is now making plans for the presentation of this contention to the Senate Finance Committee.

STATEMENT OF C. JASPER BELL, AUGUST 17, 1951, URGING AMENDMENT OF SECTION 23 OF H. R. 1535

Mr. Chairman and gentlemen of the committee, I appear upon behalf of the National Institute of Oilseeds Products, which is composed principally of copra

crushers. These crushers are located, mainly, on the east and west coasts, with the main concentration in the State of California. The copra which my clients crush is imported from the Philippine Islands. The remarks which I will make, therefore, will concern equally the welfare of the domestic copra crushers and the producers of their raw material in the Philippines.

My clients' interest in H. R. 1535 rests in section 23 which is entitled "Conversion of processing taxes to import taxes." Section 23 proposes to convert the processing taxes levied on the first domestic processing in section 2470 (a) (1) of the Internal Revenue Code, applying to certain oils and fats, to customs duties. Among these is the 3-cent-per-pound processing tax on coconut oil which it is proposed to convert into an import duty of the same amount which would be levied on imports of coconut oil as such. An equivalent customs duty in the vicinity of 1.9 cents per pound would be levied upon imports of copra, which has heretofore been duty free and in fact is now found on the duty-free list of the General Agreement on Tariffs and Trade.

In addition to the 3-cent processing tax which is applicable to coconut oil of all origins there is an additional 2-cent-per-pound processing tax levied in paragraph (2) of section 2470 (a) of the Internal Revenue Code. This tax does not apply to coconut oil originating in the Philippines or any possession of the United States. Section 403 (d) of the "Philippine Trade Act of 1946" requires that this tax shall remain in effect until July 3, 1974.

Section 23 of H. R. 1535 also proposes that this 2-cent processing tax be converted to a 2-cent "customs" duty and that an equivalent import tax be levied on importation of copra not originating in the Philippines or possessions of the United States. The purpose of the 2-cent differential in the processing tax is to confine imports of copra and coconut oil into the United States to imports from the Philippines and United States possessions. It accomplishes this purpose very effectively. This explains why the copra which my clients crush originates almost entirely in the Philippines except for the very small quantity which comes from United States possessions such as American Samoa. Furthermore, since this tax must remain in effect until July 3, 1974, it is apparent as to why the welfare of my clients and that of the Philippine copra producers are completely interlocked.

The purpose of my appearance here is to petition this distinguished committee to repeal the 3-cent processing tax in place of converting it to an import tax. This petition is in a sense a renewal of a petition which I made when I last appeared before this committee in 1946 in my capacity as chairman of the Committee on Insular Affairs of the House. Your committee then had before it the bill which, when enacted into law, became Public Law 371 of the Seventy-ninth Congress known as the Philippine Trade Act of 1946. The bill was introduced by me. It contained a provision which would have eliminated the processing tax on coconut oil imported from the Philippines when employed for nonfood uses. While there appeared to be no objection to the basic philosophy of the provision which was that the Philippines should not be started out as an independent republic without some effort to do something to aid their principal industry, viz, the coconut products industry, the amendment did meet with opposition because it discriminated against certain users of edible coconut oil such as the confectioners and bakers. The provision was therefore removed from the bill by the Ways and Means Committee in the fourth and final revision.

I am quite sure that had not the Ways and Means Committee been pressed for time that it would have paused long enough in its deliberations to permit the formulation of a satisfactory solution of the problem of how to help the Philippines in the marketing of their most important cash crop, namely, copra. My appearance here now is made in the hope that in the consideration of H. R. 1535 an uncompleted task will finally be completed. In other words, section 23 of H. R. 1535 affords opportunity to correct a most serious omission in the Philippine Trade Act of 1946.

The United States wants the economy of the Philippines to prosper. It is a necessary essential for the success of the independence of the Philippines. As proof of this our Government has agreed to give the Philippine Republic $50 million per annum over the period of the next 5 years. On the other hand, we have collected during the past 5 years through the medium of the 3-cent per pound processing tax about $80 million on Philippine coconut oil. This obviously is not good business. I don't know precisely how much of that $50 million per annum subsidy we are paying the Philippines would not have to be paid if we would remove the 3-cent burden from the Filipino's coconut oil, which is his chief export in the form of oil and copra, but it would be a sizable decrease.

The 3-cent per pound tax which our Treasury levies on coconut oil depreciates the market price of the entire copra and coconut oil production of the islands. This is so because the part which we purchase—which is about 70 percent on the average—sets the market for the balance which is sold to other countries. Since 6 million people, or about one-third of the population of the Philippines, are directly or indirectly dependent upon the coconut products industry for their livelihood, it can be seen that this is an important matter. Our Government does not want to go on subsidizing the economy of the Philippines indefinitely but we put ourselves in the position of not having a proper excuse for not doing so long as we continue to levy a heavy tax upon the product of their leading industry.

Beginning with the levying of the processing tax in 1934 and prior to the granting of independence to the Philippines on July 4, 1946, all proceeds from the processing tax on Philippine coconut oil were remitted by the United States Government to the Treasury of the Philippine Islands to be used for the benefit of the people and Government of the Islands. Section 2476 of the Internal Revenue Code which required these payments was repealed in Public Law 371 of the Seventy-ninth Congress—"Philippine Trade Act of 1946." Since July 3, 1946, according to the annual reports of the Commissioner of Internal Revenue, the following tax has been collected per annum on coconut oil of Philippine origin: $12,103,765.86 in fiscal year 1946–47; $23,228,521.80 in fiscal year 1947–48; $14,743,108.98 in fiscal year 1948–49; $13,838,638.19 in fiscal year 1949–50; and an estimated $16,000,000 in 1950–51 fiscal year. All of this money—a total of $79,914,034.83—was covered into the general fund of the Treasury of the United States.

My viewpoint was and still is that simultaneously with the repeal of section 2476 of the Internal Revenue Code which foreclosed the payment of the tax money to the Philippines that Congress should have repealed the 3-cent processing tax as contained in section 2470 (a) (1) of the code. Had the amount of money represented by the proceeds of the processing tax in each of the 5 years since the Philippines became independent been allowed to remain in the Philippines in the form of increased market returns to the Filipino farmers for their copra, it would have been diffused through the Philippines' economy and would have multiplied manyfold. That's the kind of direct assistance which the Philippine economy needs. It is like the sap of the tree which starts up from the roots and works through every limb, twig, and leaf. It would be of a great deal more assistance than the type of relief represented by the $50 million annual subsidy which we will give the Philippines for the next 5 years.

In my opinion, it is quite obvious that the Seventy-third Congress which levied the processing tax in 1934 had in mind the principle of the statement which I have just made or it would not have provided that the proceeds of the processing tax be remitted to the Treasury of the Philippine Islands. In other words, it recognized that an injury had been inflicted upon an important segment of the Philippine economy and to make partial amends for it the tax money collected was paid to the Philippines' Treasury.

I desire to introduce into the record at this point a table (No. I) taken from the Philippine Newsletter, vol. 1—No. 1, June 15, 1951, giving the dollar value of 20 leading Philippine exports in the calendar year 1950. It will be noted that of the total value of these exports in the amount of $319,389,989 that the products of the coconut industry represented $185,231,594 or 58 percent of the total. You can see from this why it is that if the economy of the coconut products industry is bad then the entire economy of the Philippines is in a bad way.

In June of this year the Honorable Cornelio Balmaceda, Secretary of Commerce and Industry of the Government of the Philippines, made a special trip to Washington to request the repeal of the 3-cent coconut-oil processing tax. He interviewed officials of the Department of State and of the Department of Commerce. He informed these officials that the postwar economy of the Philippines was geared to the coconut-products industry. He stated that it was the only major industry which had been able to get fully under way after the war. He pointed out that their other two big industries, sugar and abacá, being only about half way back to prewar scale of production that something had to be done to keep the Philippine crops market on a sound footing or the entire economy of the islands would suffer. He stated that the repeal of the 3-cent per pound processing tax on coconut oil was essential to accomplish this end.

In April of this year the Philippine Republic passed, at the request of our Government, a minimum-wage law which materially increases the wages of both urban and agricultural workers. Thus the Philippines becomes the only country

in southeast Asia to adopt a minimum-wage law comparable to that of Occidental nations. Since they made this move at our request, I believe that the United States would be all the more in an inconsistent position if we continue to maintain either a high processing tax or a high customs duty against the chief export of the Philippines, namely, copra and coconut oil, now that we have obligated them to materially increase their costs of production.

I have earlier stated that the provision repealing, in part, the 3-cent processing tax contained in my bill from which Public Law 371, Seventy-ninth Congress, was constructed met with objection because it discriminated against certain classes of edible users, such as confectioners and bakers who have necessary and essential uses for coconut oil in the manufacture of their products. I should state that the reason the use of tax-free coconut oil was restricted to nonedible use was that the Department of the Interior, which then had supervision of Philippine affairs, recalled that coconut oil had been used as an important ingredient in oleomargarine prior to World War II and suggested the limitation for that reason. What they did not realize, however, was that during World War II, when no coconut oil could be employed for oleomargarine manufacture under Food Distribution Order No. 43, oleomargarine manufacturers learned new manufacturing techniques whereby they were able to dispense with the use of coconut oil in the manufacture of their product. FDO–43 was revoked on October 1, 1946. Notwithstanding that, they have been free to use as much coconut oil in their formulas as they see fit, since that date coconut oil has constituted only an insignificant part of the oils and fats ingredients of oleomargarine. According to the annual report of the Commissioner of Internal Revenue, coconut oil constituted less than one-tenth of 1 percent of the oils and fats ingredients of oleomargarine in the fiscal year ending June 30, 1949. In the fiscal year ending June 30, 1950, when 875,720,000 pounds of oleomargarine were produced, only 12,000 pounds of coconut oil were employed as compared to 446,384,000 pounds of cottonseed oil and 253,334,000 pounds of soybean oil. Coconut oil constituted less than two-thousandths of 1 percent of the oil and fat ingredients. I desire at this point to submit for the record table II which gives these statistics from the report of the Commissioner of Internal Revenue in detail.

The only other edible product in which coconut oil could offer noticeable competition to domestic edible oil and fats is vegetable shortening. It has never been employed in shortening manufacture to any extent because of its tendency to froth and sputter when heated. In the five prewar years 1937–41, according to the Bureau of Agricultural Economics of the United States Department of Agriculture, coconut oil constituted on the average 1.4 percent of the ingredients of vegetable shortening. In 1950 it constituted 1 percent.

Coconut oil is not regarded by the Department of Agriculture as a food oil. They classify it as a nonfood oil. In respect to its use in food the Department of Agriculture has the following to say in the July issue of the Fats and Oils Situation which is published by the Bureau of Agricultural Economics:

"For the last decade, use of nonfood oils in food products, principally, coconut and palm, has been comparatively small. During the war, the available supplies of these oils were channeled to vitally needed nonfood products. In the last few years, large supplies of domestic edible oils, available at comparatively low prices, have displaced a large percentage of the nonfood oils previously used in food."

In the light of the foregoing factors which I have discussed I believe that the processing tax on coconut oil should be repealed without restriction. In other words, it should be tax-free for all purposes. Furthermore, since no coconut oil enters the United States in noticeable volume except that which is made from copra originating in the Philippines or our dependencies the 3-cent processing tax should be eliminated as applies to coconut oil of all origins. This would obviate any claim that the removal of the processing tax was discriminatory in favor of the Philippines.

SOAP MARKET BEING CUT INTO BY SYNTHETIC DETERGENTS

The chief market for coconut oil in the United States has always been in the soap kettle. It is coconut oil which supplies the free lathering qualities of soap. This is due to the low molecular weight fatty acids in its make-up. Domestic oils and fats contain fatty acids of high molecular weight. Hence they do not lather freely.

In actual practice, no very large percentage of soap produced in the United States, even when the supply is abundant, is made exclusively from coconut oil.

The most generally satisfactory soap is made by using a mixture of coconut oil with tallow or animal greases. The tallow provides the body and lasting properties of the soap while the coconut oil provides the quick lathering property. Thus coconut oil and tallow each supplement the other in making a satisfactory soap.

Throughout the geographical area of the United States west of the Appalachian Mountains, the water supply possesses varying degrees of hardness or alkalinity. In much of the western part of the United States this hardness is most pronounced. Soaps employed in such areas, therefore, must contain liberal percentages of coconut oil or otherwise they will not lather with any degree of satisfaction. The general run of soaps employed throughout the United States as a whole contains from 15 to 25 percent of coconut oil.

In areas east of the Appalachian Mountains, the water is less apt to be hard or alkaline. There are, however, important areas east of the Appalachians where the water is possessed of a considerable degree of alkalinity. Under practical soap-making conditions, therefore, the soap manufacturer who produces soap for household usage is obliged to put a substantial percentage of coconut oil in all the soap produced, no matter in what section of the country marketed.

Synthetic detergents also have excellent detergent properties in water of high alkalinity. These products which are made in the most part by the use of benzene—largely the product of coke ovens—and sulfuric acid have come into widespread use since the close of World War II. Their production began considerable prior to World War II, but consumption was less than one-half pound per capita until the war years. Coconut oil was then in very short supply due to the occupation of the chief producing areas by the Japanese. Per capita consumption stepped up to 1 pound in 1943. By 1947 the per capita consumption had reached 3 pounds. In 1950 it was 8 pounds per capita.

Coinciding with the increase in the per capita consumption of synthetic detergents there has been a drop in the per capita consumption of soap. According to the Bureau of Agricultural Economics of the Department of Agriculture the average per capita consumption of soap for the 4-year prewar period from 1938 to 1941 was 28¾ pounds. In the year 1949 soap consumption dropped to 22 pounds per capita. It still stood at that figure at the end of 1950 despite a post-Korean splurge of buying by the housewives.

As the consumption per capita of soap has declined the consumption of coconut oil in soap has decreased. In the 4-year prewar period 1938–41, according to the Fats and Oils Situation published by the Bureau of Agriculturl Economics, the consumption of coconut oil in soap averages 403,000,000 pounds per annum. The average consumption in soap for the years 1949–50 was 269 million pounds, which represents a drop of 134 million pounds. This represents a decline of 33 percent.

The decline in the consumption of coconut oil in soap deprives my clients of the opportunity which they might otherwise have had to crush an additional 106,000 short tons of copra per annum. It is a source of great concern to them. They know that the loss of one-third of their market in the soap kettle is tied in with the losing battle which soap is making against synthetic detergents. The kinds of soap which can win the battle against synthetic detergents must contain a high percent of coconut oil; but coconut oil must fight with one hand tied behind its back as long as it bears the 3-cents-per-pound processing tax. Any reduction in the price of coconut oil which might result from the repeal of the 3-cent-per-pound processing tax would put soap in that much better position to compete with synthetic detergents.

DEPARTMENT OF DEFENSE STOCKPILES COCONUT OIL

Another reason for the repeal of the processing tax on coconut oil is the large amount which is used for defense needs. The Munitions Board maintains a stockpile of many thousands of tons. The strategic uses to which coconut oil is put are as follows:

1. *Synthetic rubber.*—Synthetic rubber utilizes the largest quantity of coconut oil used in the defense program. It is used for the manufacture of mercaptan, one of the important ingredients of synthetic rubber. There is no approved substitute.

2. In the manufacture of incendiary bombs such as napalm, coconut oil fatty acids constitute 50 percent of the total fatty acid content. This use ranks second in size.

The napalm bomb is one of our most valuable offense weapons on the Korean front.

3. It is used as a plasticizer in the manufacture of superior nonclouding at low temperatures safety glass for airplanes, tanks, trucks, and automobiles.

It is also used as a plasticizer in cellulose acetate molding powder for the manufacture of auto, truck, airplane, tank, and radio parts.

4. *In synthetic resins.*—One of the important uses of these resins is in the production of the lining for food containers, the use of which is indispensable in view of the current shortage of tin.

5. *Insecticides and germicides.*—The Navy has a germicidal program which calls for the use of quaternary amines made from coconut oil in the production of germicides known variously as Navy Germicide, Tetrosan, etc.

6. *For use in the flotation process in the mining of materials such as potash.*—The mineral is dispersed in water. Coconut oil in processed form (quaternary amines) is added. The bits of rock and other foreign material are buoyed up by air bubbles introduced from the bottom of the container and can be skimmed off along with the supernatant foam. The function of the processed coconut oil is to act as a surface agent and by removal of the surface film to permit of a more complete separation of the potash from extraneous materials than would otherwise be possible. Coconut oil in processed form is also employed in the flotation process in the mining of molybdenum.

7. *Rubber substitutes such as hospital sheetings.*—Coconut oil has an important use as a plasticizer in the manufacture of rubber substitutes of the poly vinyl chloride type of resin.

8. *In vulcanized rubber goods such as tires.*—Lauric acid produced from coconut oil is employed in the production of zinc laurate, which is used to shorten materially the vulcanizing process in the production of automobile tires.

9. Coconut oil is employed in the production of sulfonated higher alcohols, which in turn are employed in such important uses as:

(*a*) Wetting agents for use in the paper and pulp industries;
(*b*) In dyeing agents for textiles and leather;
(*c*) In electroplating;
(*d*) In insulating material.

Coconut oil, aside from its specific uses in the war effort, is of further importance in that it yields approximately 40 percent more glycerine per pound of oil than any domestically produced fat or oil, or, stated in other terms, approximately 140 pounds of domestic fats and oils must be consumed to make the same amount of glycerine that 100 pounds of coconut oil would produce.

The needs for glycerine in substantial quantities include—

(*a*) Those for cordite, blasting powder, and explosives.
(*b*) Dynamite for mining iron for steel, copper, nickel, tungsten, molybdenum, etc.
(*c*) Protective coatings on ships, tanks, etc.
(*d*) Indirect defense requirements such as explosives for mining coal, medicinal and drug supplies, protective coatings of all kinds, plasticizers, and innumerable others.

All the fats are sources of glycerine, but in the past coconut oil has been a source of approximately one-quarter of the glycerine produced domestically.

Every pound of coconut oil which is used for the foregoing strategic needs pays the 3-cent-per-pound processing tax. There is no provision in the Internal Revenue Code which permits an exemption for defense usages.

Defense usage of coconut oil currently makes up for some of the business which the copra-crushing industry has lost due to the competition of synthetic detergents, but this will last only during the rearmament period. Had it not been for this business and the stockpiling program, the copra-crushing industry would have been in a very bad way indeed due to the ground lost in their peacetime markets in recent years. The extent to which over-all demand for coconut oil has receded despite defense usage requirements is shown by comparing domestic disappearance of coconut oil for the years 1949 and 1950 with the 4-year prewar period—1938–41. Domestic disappearance in 1949 was 527,826,000 pounds and in 1950 it was 536,738,000 pounds, which included that used in the rearmament program. The average for this 2-year period is 532,664,000 pounds. The annual average of domestic disappearance in the 4-year prewar period, 1938–41, was 631,806,000 pounds or about 100 million pounds per annum greater.

While imports of copra and the copra equivalent of coconut oil imported into the United States have declined to no great extent in the postwar period this has been due largely to the importation of many thousands of tons of copra and coconut oil by the Munitions Board for stockpiling for strategic purposes and for defense needs as previously discussed. Total imports expressed as copra for the postwar period 1946 to 1950, inclusive, averaged 486,403 long

tons as compared to 495,126 long tons for the prewar period 1937 to 1941, inclusive. This represents a decline of 1.7 percent for the postwar period. Between these two periods the population of the United States increased 14.5 percent. Copra and coconut oil imports should, therefore, have been more than 16 percent greater had the prewar rate of importation per capita been retained.

UNITED STATES WORLD'S GREATEST EXPORTER OF OILS AND FATS

The world production of oils and fats, according to the Office of Foreign Agricultural Relations publication Foreign Crops and Markets of March 5, 1951, amounted in the year 1950 to 22,900,000 short tons. Production in the United States accounts for more than one-fourth, or, to be exact, 26.89 percent of this total. The annual copra and coconut oil production of the Philippine Islands amounted in 1950 to 640,000 short tons in terms of oil—which is only 2.8 percent of the world supply of oils and fats. The Filipinos consume a considerable tonnage of their production, i. e., about 75,000 short tons, which leaves around 565,000 short tons for export as copra and oil.

When the processing tax was levied on coconut oil in 1934 the United States was a net importer of oils and fats, including the oil equivalent of imported oilseeds, of about 1 billion pounds per annum. Under postwar conditions we have assumed a position of net exporter of 1 billion pounds per annum.

The change in the American position from net importer to net exporter means that whatever Philippine coconut oil is excluded from the United States by the 3-cent processing tax or the customs duties proposed in H. R. 1535 will be encountered by our exportable surpluses in world markets. Since the processing tax depresses the market price for Philippine copra and coconut oil, the retention of the tax as such or as a customs duty will be detrimental to the very interests it was originally designed to protect as they will be obliged to meet its competition at a lower level of price than if admitted into the United States to be absorbed by markets such as that in the soap-making field which is rapidly being taken over by synthetic detergents.

Gentlemen, if I were now a Member of Congress representing a district producing cottonseed or soybean oil I would surely fight to remove the 3-cent tax from coonut oil so that my constitutents might have the resulting advantage in world markets.

Exports of oils and fats from the United States in 1950, according to the Bureau of Agricultural Economics publication Fats and Oils Situation for February-March 1951, totaled 2,084,000,000 pounds, including oilseeds and fats and oils products in terms of oil. Total United States production of oils and fats from the 1950 crop, according to the June 2 issue of Fats and Oils Situation was 12,315,000,000 pounds (6,157,500 short tons). This means that at the rate of 1950 exportation we are selling close to 17 percent of our total production in world markets.

Our edible oil and fat production from the 1950 crop was 8.9 billion pounds. Principal exports of food oils and fats in 1950 were: lard, 501.4 million; cottonseed oil, 140.2 million; soybean oil, including oil equivalent of soybeans, 486.7 million; peanut oil, including oil equivalent of peanuts, 61.3 million. Total exports of edible oils and fats in 1950 were 1,218,800,000 pounds—which, applied against the 1950 crop of 8.9 billion pounds of edible oils show that exports moved out at a rate of about 14 percent of total production.

The United States production of inedible fats and oils from domestic materials is estimated by the Bureau of Agricultural Economics to be around 3.4 billion pounds. Inedible tallows and greases account for the largest proportion of the nonfood fats and oils production in the United States. Inedible tallow and grease production in 1950, according to Fats and Oils Situation for May-June 1951, was 2,267,000,000 pounds. Of this production 67.3 million pounds of greases and 468.6 million pounds of inedible tallow were exported; a total of 535.9 million pounds. This figure represents 23.6 percent of total production which had to be sold in world markets in 1950. Other exports of inedible oils and fats in 1950 include: fish oils, 76 million pounds and linseed oil and oil equivalent of flaxceed, 94.7 million pounds. These figures on exports show that there could be no possible means whereby the United States could profit either on its edible or inedible production of oils and fats from retaining the 3-cent per pound processing tax on coconut oil.

Mr. Chairman, the problem of the Filipino is how to get dollars. He needs dollars to pay for the canned milk, flour, canned fish, and other food products which he buys from the United States. He needs them for the fertilizer, agricultural implements, and textiles he buys from us. Since coconut products represent

58 percent of Philippine exports, the quickest way to increase the Filipino's supply of earned dollars is to repeal the 3-cent processing tax on coconut oil. Not only would we have the satisfaction of having removed an unjust tax which directly affects the Philippines and no other country, but we would enhance the ability of the Filipino to buy more of the products of the United States.

H. R. 1535 PROPOSES TO FREEZE COPRA AND COCONUT-OIL TAXES UNTIL 1947

Section 23 of H. R. 1535 contains a very novel proposal. While it proposes to convert the processing taxes to customs duties, it says on page 43 that the Philippine Republic must continue to consider them as "internal taxes." In other words, we set up a legal fiction. The purpose of the creation of this legal fiction is to prevent the Philippine Republic from claiming exemption from them as customs duties under section 201 of the Philippine Trade Act of 1946. The following paragraph, however, cuts even deeper. It provides that the converted duties may not be subject to modification under section 350 of the Tariff Act of 1950. In other words, it is proposed after converting the tax to a customs duty to freeze it until July 3, 1974. This appears to be a most unjust way to treat the Philippines for whose welfare we continue to bear responsibility.

The 3-cent processing tax was levied in 1934. The Reciprocal Trade Agreement Act likewise went into effect in 1934. During the 17 years that it has been in effect we have lowered, through reciprocal trade agreements with many nations, thousands of tariff duties. With few of these nations have we had ties as close as those between the United States and the Philippines. Yet in the 17 years that the 3-cent-per-pound processing tax has been in effect against Philippine coconut oil we have made no effort to modify it.

In the specific instance of babassu oil, the United States has utilized section 350 of the Tariff Act of 1930 to bind a closely competitive oil on the free list. Babassu oil like coconut oil is high in lauric acid. It is this fatty acid which makes them valuable for many essential needs. Both contain in excess of 45 percent lauric acid. Babassu is the only other high lauric acid oil which is readily available to the United States market. Babassu oil was initially bound on the free list in the trade agreement effected with Brazil in 1936. It was again bound in the General Agreement on Tariffs and Trade as negotiated at Geneva in 1947. The Philippine Republic insists that this is discriminatory and a violation of the Philippine Trade Act of 1946 and their trade agreement with us; and I think they are right. The discrimination ought to be removed by the repeal of the 3-cent tax on coconut oil. This action is all the more requisite now because the United States Government is taking steps under the point 4 program for Brazil to increase the production of babassu oil. The point 4 program would promote mechanization of the industry and improve transportation conditions in babassu growing areas.

As I have stated, it is proposed in H. R. 1535 to freeze the 3-cent processing tax, after conversion to a customs duty, for an additional 23 years. The finality which would be indicated by an action of this kind would seem to mean that the inherent injustice in the 3-cent per pound processing tax could never be rectified. Gentlemen, I just do not believe that the hearts of the people of the United States are that calloused. The Philippines are still our responsibility and will be until their independence is a success. Their craft is already wobbling in the 8-year free-trade period of the Philippine Trade Act of 1946 which everyone had hoped would be an easy passage. They are to hit the first rapids after July 4, 1954, when we begin to apply graduated tariff duties to part of their exports to us and declining quotas to the balance. I doubt that they can negotiate the passage unless we do something to help their chief industry, namely, the coconut products industry, and that means to repeal the processing tax.

A very simple amendment will accomplish the objective: It would be to insert a new paragraph (b) on page 39 of H. R. 1535, reading: "Section 2470 (a) (1), Internal Revenue Code (U. S. C., 1946 edition, title 26, sec. 2470 (a) (1)), is amended by striking out the words 'coconut oil' following the words 'processing of'."

It will also be necessary to remove from the various subdivisions of section 23 of H. R. 1535 all reference to the proposed change-over of the 3-cent per pound processing tax to a tariff duty applicable to copra and coconut oil.

TABLE I.—*20 leading Philippine exports, 1950*

Commodity or article	Amount	Commodity or article	Amount
Copra	$136,415,957	Tobacco and manufactures	$1,736,633
Sugar, centrifugal	48,839,946	Scrap metals	1,652,266
Abacá, unmanufactured	40,132,744	Shells and manufactures	933,390
Desiccated coconut	23,967,834	Rattan furniture	688,027
Coconut oil	21,738,017	Chemicals	622,229
Logs and lumber (cubic meters)	9,819,055	Abacá, manufactures, except rope	583,728
Pineapples, canned	9,681,381	Molasses	537,277
Base metals, ores, etc	9,001,410	Bunta hats (numbers)	320,157
Embroideries	5,638,176		
Copra meal or cake	3,109,786	Total	319,389,989
Rope	2,000,212	Coconut products (58 percent of total)	185,231,594
Gold and concentrates	1,971,764		

Source: Philippine Newsletter, vol. I, No. 1, June 15, 1951.

TABLE II.—*Use of coconut, cottonseed, and soyabean oils in margarine—Percentage of total oils used and production of margarine, fiscal years (ending June 30), 1924 to 1950, inclusive*

Year	Coconut oil [1]	Percent [2]	Cotton oil [1]	Percent [2]	Soya oil [1]	Percent [2]	Other oil [1]	Percent [2]	Total oils and fats used [1]	Production of oleomargarine [1]
1924	83,059	40	20,640	10	.....	.....	101,081	50	204,780	239,699
1925	79,449	43	20,966	11	.....	.....	85,084	46	185,499	215,403
1926	98,307	46	25,608	12	1	.....	90,189	42	214,105	248,047
1927	107,564	49	23,372	11	33	.....	89,633	40	220,602	257,157
1928	141,000	56	24,801	10	.....	.....	87,014	34	252,815	294,699
1929	171,412	59	28,173	10	.....	.....	89,131	31	288,716	333,122
1930	185,066	62	30,214	10	619	.....	81,910	28	297,809	349,124
1931	155,954	67	22,037	9	2,262	1	54,113	23	234,366	277,773
1932	127,967	72	14,874	8	13	.....	35,262	20	178,116	215,342
1933	134,430	75	16,031	9	7	.....	28,287	16	178,755	219,043
1934	140,083	70	24,338	12	.....	.....	34,607	18	199,028	243,187
1935	149,769	53	96,324	34	542	.....	38,529	13	285,164	353,821
1936	167,215	55	93,917	31	3,736	1	40,483	13	305,351	371,737
1937	101,375	32	137,018	43	26,842	8	55,537	17	320,772	389,264
1938	87,054	26	177,583	52	33,222	10	40,720	12	338,579	415,404
1939	70,759	26	109,224	41	53,982	20	35,684	13	269,649	332,973
1940	26,271	11	102,057	42	82,332	34	33,455	13	244,115	303,718
1941	16,525	6	136,035	49	92,152	33	32,102	12	276,814	343,935
1942	24,992	8	152,027	51	75,165	25	47,740	16	299,924	368,476
1943	.....	.....	207,617	46	195,022	44	44,333	10	446,972	548,468
1944	.....	.....	236,739	48	203,274	41	54,286	11	494,299	609,026
1945	.....	.....	258,039	52	196,401	39	43,689	9	498,129	612,999
1946	.....	.....	211,561	47	203,940	46	33,081	7	448,582	549,202
1947	27,150	5	247,751	47	217,264	42	31,067	6	523,232	642,406
1948	13,223	2	433,069	60	246,841	34	30,610	4	723,743	890,334
1949	890	.1	435,251	63	244,544	35	9,056	1.9	689,741	858,613
1950	12	.....	446,384	63	253,334	35	11,442	2	711,172	875,720

[1] In thousands of pounds.
[2] Percentage of "Total oils and fats."

Source: Annual Report of the Commissioner of Internal Revenue.

CHAMBER OF COMMERCE OF THE UNITED STATES,
DEPARTMENT OF GOVERNMENTAL AFFAIRS,
Washington, D. C., January 23, 1952.

The Honorable WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: The Chamber of Commerce of the United States of America wishes to register its approval of the purposes of H. R. 5505 as set forth in the report of the House Committee on Ways and Means, October 1, 1951.

The purposes of this bill (H. R. 5505), as passed by the House on October 15, 1951, and now receiving the consideration of your committee, are in full accord with the policies of this organization.

I am attaching the attitude of the national chamber's membership on this subject.

Respectfully yours,

(Signed) C. R. Miles,
(Typed) CLARENCE R. MILES.

POLICY STATEMENT OF MEMBERS OF THE CHAMBER OF COMMERCE OF THE UNITED STATES FAVORING CUSTOMS PROCEDURE REVISIONS

We recommend that all countries seek to modernize, simplify, and standardize their consular and customs administrative regulations and consular and trade formalities and documentation by thorough and over-all revisions. We need immediate administrative and legislative action to effect modernization and simplification of our customs administrative regulations and customs provisions of our tariff laws.

The Treasury Department should immediately effect desirable changes which can be accomplished by administrative action, and transmit to Congress its recommendations for changes requiring legislative action. The Treasury Department, in cooperation with its Customs Bureau, the Departments of State and Commerce, the United States Tariff Commission, and any other appropriate Government agencies, should continue to survey such laws and regulations.

WILLIAMS, CLARKE CO.
Wilmington, Calif., January 26, 1952.

HON. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SIR: We refer you to H. R. 5505, Customs Simplification Act, now before the Senate Finance Committee for consideration, it having passed the House on October 15, 1951. We heartily endorse this bill for its purpose and necessity and trust that you will exercise your influence with the committee and on the floor of the Senate to provide the support necessary for its enactment into law.

This bill does, however, contain certain features which in our experience we firmly believe need to be remedied to make it the law it hould be. To this end we supply the following information for your guidance and request that you seek the changes in the law to correct the deficiencies to be outlined.

Section 13 of the proposed bill should set a definite time limitation within which the customs appraiser must complete his appraisement. In the past, as now, without such a time limit it is not uncommon for an appraisement requiring payment of increased duties to be completed 10 years or more after the goods have arrived, been entered, and delivered to the importer. You can readily see that such delay can result in many situations detrimental both to the Government and the importer. From the importer's standpoint it may cause serious financial difficulty, and more important, when an importer knows that certain items will be subject to delays because of withheld appraisement, he will cancel orders for such merchandise thus interrupting a normal flow of trade. Such delays may also cause the Government to lose revenue for, in such a period of time, the importer or his surety may become nonexistent or bankrupt, making collections impossible. Certainly an agreement could be reached as to what would constitute a reasonable time in which the appraiser should be required to determine the value of imported merchandise entered in the usual normal customs procedure.

Section 16 of the bill would increase the ceiling on informal entries from $100 to $250. Here we are concerned with commercial shipments only. It is estimated that under the proposed bill, and using mail, air and surface transportation facilities it would be possible for a single importer to bring into the country merchandise valued at a minimum of $250,000 per year.

Since merchandise imported informally is not subject to expert examination, classification, and appraisement, it is logical to presume that importers would flock to adopt this method of importation. The normal customs safeguards and importations of embroidery, handkerchiefs, semiprecious and synthetic stones and many other commodities would disappear and the way to many abuses would be wide open.

In addition, since each present formal entry would be broken up into many informal entries, the number of transactions would be multiplied and customs

personnel would have to be increased accordingly, thus causing greater expenditure instead of the economy which is sought.

Re section 17: This proposed section eliminates amendment of entries and deals with duties on undervaluation. The proposal which would abolish the right of amendment of an entry under any circumstances once an entry has been made is too harsh and is entirely unnecessary. There are situations where, from the point of view of the Government, of the customhouse broker, and of the importer, it would be salutary to permit amendment of entries. Without the right to amend the entry, the additional duties provided for in this section may well be imposed upon an innocent person who, if permitted to amend his entry, would have avoided these additional duties and yet paid to the Government what was lawfully due.

We believe that the concept of additional duties is wrong and should be discarded entirely. If there is an honest dispute between an importer and the Government, the dispute should be resolved in the proper forum without any penalty. If an importer is fraudulent or deceptive, there are other provisions of law which amply punish him, either through criminal prosecution or civil penalties against him personally or against the goods imported.

We believe the above-mentioned observations are of the greatest interest to the entire importing community and it is for this reason that we present them to you and solicit your support of them.

Should you need additional information, verification, or other data in reference to the foregoing, please let us know as we want to assist you in any way possible with this matter.

Very truly yours,

WILLIAMS, CLARKE CO.
By JAMES CLARKE

NATIONAL FOREIGN TRADE COUNCIL, INC.,
New York, N. Y., February 4, 1952.

Reference H. R. 5505

HON. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR GEORGE: The National Foreign Trade Council for many years has urged a simplification of United States customs administration. The final declaration of the Thirty-eighth National Foreign Trade Convention, held in New York October 29–31, 1951, contained the following recommendation on customs simplification:

"The convention is gratified that the House of Representatives has recently approved, by voice vote, the customs simplification bill, H. R. 5505. It urges that the Senate complete action on this legislation promptly at the next session of Congress. It expresses the hope, however, that the Senate will give careful consideration to the suggestions for amendment submitted by business to the House Ways and Means Committee.

"The convention commends the Treasury Department and the Bureau of Customs for the progress made in simplifying customs procedures where such steps could be taken without new legislative authorization. It regards the proposed revision of the draw-back procedure, and the administrative improvements which have been instituted in the inspection and clearance of certain bulk shipments, as well as mail and air entries, as significant achievements in this direction.

"The Foreign Trade Zones Board is also commended for the completion, in cooperation with the Bureau of Customs, of simplified regulations and procedures for merchandise transferred to our foreign-trade zones."

Among the suggestions which our council made to the House Ways and Means Committee for amendment of H. R. 1535 (the previous Simplification Act) were the following:

"*Reference: Section 313 (b) of the Tariff Act of 1930—Extension of time limitation to 3 years*

"Section 313 (b) as constituted in the Tariff Act of 1930 contains a time limitation of 1 year in which the imported sugar, nonferrous metals, or ores containing nonferrous metal, may be used in manufacture. The proposed extension to 3 years seeks to place articles manufactured under section 313 (b) on a more equitable basis vis-à-vis articles manufactured under section 313 (a) which

by virtue of section 313 (h) are limited only to the extent that they are required to be exported within 3 years from date of importation of the duty paid component.

"The 1-year restriction is considered impractical under normal export-trade conditions and even more so in the light of the artificial trade barriers imposed on foreign commerce under the circumstances prevalent today. Conditions beyond the control of the manufacturer make it extremely difficult if not impossible for him to predetermine the export market potential within the 1-year period provided by section 313 (b). Occasionally, hardships are provoked through emergencies arising from foreign political disturbances, world-wide economic setbacks, wars, and strikes, which seriously restrict the scope of the manufacturer's export production. It was the result of the emergency caused by the recent World War that brought about Presidential Proclamation No. 2566, issued August 7, 1942, extending section 313 (b) to 3 years with respect to sugar.

"Reference: Section 313 (h) of the Tariff Act of 1930—Extensions of time limitation to 5 years

"The proposed amendment seeks to extend the time limitation in which the manufactured products may be exported to 5 years from the date of importation.

"The amendment would remove an inequity which has been caused by the conflict between section 557 of the Tariff Act of 1930 which authorizes imported merchandise to remain in bonded customs warehouses for a period of 3 years and the present provisions of section 313 (h) which require the draw-back articles to be manufactured and exported within the same period. The bonded warehouse privilege is thus partially nullified in the case of merchandise used in the manufacture of draw-back articles.

"We believe these proposals will be acceptable to the Department of the Treasury, in view of the statement made to your committee by Mr. John S. Graham, Acting Secretary of the Treasury, in his letter of February 13, 1950, in connection with H. R. 4612, as follows:

" 'The Department perceives no objection to allowing a period of 3 years instead of 1 year for the use of imported duty-paid merchandise and for the manufacture or production of the exported articles. In fact a 3-year period is now permitted in the case of sugar under the authority of Proclamation No. 2566 issued by the President on August 7, 1942, and Treasury Decision 50703 issued by the Secretary of the Treasury on Augsut 12, 1942. No administrative difficulty has been experienced in that connection.

" 'The Department also perceives no objection to allowing a period of 5 years after importaton of the imported merchandise instead of 3 years in which to export the completed article.

" 'If either the amendment providing a 3-year period for the use of the imported duty-paid merchandise and for the manufacture or production of the exported articles or the amendment providing a 5-year period in which to export the completed articles is adopted, it is suggested that suitable language be incorporated in the amendment limiting its application to transactions to which the previous time limit shall have expired prior to the enactment of the amendment. Some such limitation is considered necessary in order to avoid confusion and administrative difficulties.' "

We respectfully request that these recommendations be considered and be made part of the record of your committee's hearings on H. R. 5505.

Sincerely yours,

WILLIAM S. SWINGLE, *President.*

ILLINOIS MANUFACTURERS' ASSOCIATION,
Chicago, Ill., January 31, 1952.

Customs simplification bill (H. R. 5505).

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: The above measure which is pending before the Senate Finance Committee has been given consideration by members of our International Trade Committee. Our committee respectfully suggests that the Senate Finance Committee give consideration to incorporating an amendment

relating to the appraisement of merchandise in section 488 of H. R. 5505, so that there may be some determination and finality to the transaction.

Our committee believes that if the following wording was added to section 488: —"If the appraiser has not completed his appraisement of any given entry within 90 days of the original entry, then, except for fraud, the original entry as made by the importer shall be the final entry, and all assessments shall be based thereon."—it would cover a situation whereby a merchant bringing merchandise into this country, having it appraised, and within 5 years thereafter such appraisement may have been changed. In event a low duty was levied on the merchandise and the merchant calculated such low duty into his cost, sold the goods and subsequently a revised appraisement was made, the merchant may have a disinct loss. We believe that the adoption of this clarification would result in an improvement over existing laws.

Your courtesy and consideration will be genuinely appreciated by all concerned.

Cordially yours,

JAMES L. DONNELLY, *Executive Vice President.*

THE TOILET GOODS ASSOCIATION, INC.,
New York 20, N. Y., February 21, 1952.

Re customs simplification bill (H. R. 5505).

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington 25, D. C.

DEAR SENATOR GEORGE: I am writing to place before your committee the position of the Toilet Goods Association, representing 90 percent by volume of the production of perfumes, cosmetics, and other toilet preparations with respect to H. R. 5505, customs simplification bill. It is my understanding that your committee will consider this bill very shortly.

One of the provisions of it would, in our opinion, be very damaging to the manufacturers represented by this association. That is the proposal to raise the valuation of parcels imported into the United States, other than in the baggage of individual passengers, to $10.

A recent survey of the imports of perfumes and other articles subject to the 20-percent excise tax and to the prevailing rates of duty disclosed that more of these products were imported in passengers' baggage and by mail than were sold in all the leading stores in the United States. A great many of our members who are legitimate importers of foreign perfumes and cosmetics have found it difficult to compete with the flood of parcel post imports of products in their categories. They have tried to invoke section 526 of the tariff act which prohibits such imports when they bear American-owned trade-marks. This effort has met with very little success.

Already a considerable number of mail order houses have begun to advertise that they could bring these products from abroad by mail direct to individual purchasers in the United States and it is our understanding that some of these have built up a substantial business. An increase of the permitted valuation to $10 would be a terrific stimulus to these mail order houses and accordingly damaging to legitimate American companies engaged in the import business.

It is quite obvious since these companies would not pay the customs duty nor would they pay the 20-percent retail excise tax applicable to this category of products, that revenues to the United States would probably be seriously reduced.

We trust your committee will consider retaining the present lower level of valuation rather than permit this increase to take place. Should there be hearings on this matter, we do not desire to take the time of your committee for a personal appearance but we would appreciate your making this letter a part of the records of such hearings.

Cordially yours,

S. L. MAYHAM,
Executive Vice President

CLOSE & STEWART,
Spokane, Wash., February 11, 1952.

Hon. HARRY C. CAIN,
United States Senator, Washington,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: There is a matter in which the writer is vitally interested due to come before the Senate Finance Committee very shortly and I am writing you to solicit your assistance in avoiding having the Senate make the same serious mistake that was recently made by the House of Representatives.

CUSTOMS SIMPLIFICATION ACT (H. R. 5505)

The above numbered and captioned bill, we are informed, was recently passed by the House of Representatives, in the face of very strenuous objections by various organizations and individuals familiar with our customs laws, regulations, procedure, and practice, and we are informed that this bill will come before the Senate Finance Committee within a short time, and believing that our honorable Representatives made a serious mistake when voting to pass this bill, and fearing that perhaps our honorable Senators may not be any more familiar with the customs laws, regulations, and procedure and practice than was our Representatives, when they passed this bill, which, to those who are familiar with the things covered by it, it is a very vicious bill in many respects, we desire to join with other individuals and organizations and firms in protesting its passage, in its present form.

Especially we call your attention to the following:

Section 13, as passed by the House, is defective.

1. The appraiser should definitely state in his final appraisement what he has used as a basis of value, i. e., export value, United States value, etc.

2. There should be a definite time limitation within which the appraiser must complete his appraisement. In the past, as well at this time, it is not uncommon for appraisements which require the payment of increased or additional duties, sometimes of substantial amounts, are not completed for a period of from 5 to 10 years, the merchandise affected has long ago been disposed of and all but forgotten, by both the importer and his broker, or perhaps the firm has changed hands or has passed to younger management, or many other possible circumstances, and such delayed appraisements are bound to work unnecessary hardships upon some who may be the most innocent person imaginable, who perhaps never heard of or knew nothing of the circumstances or the transaction.

Section 16: We are definitely opposed to the proposed changes in this section. We individually do not and we doubt if there are many who would object to increasing the ceiling on informal entries of noncommercial merchandise from $100 as at present to $250, but to extend the ceiling on other importations would be like throwing open the door and asking every merchant or importer to help themselves, a very dangerous suggestion, and we believe one that will eventually dig deep into the revenue from imports, and surely it should not be object of our lawmakers to decrease the revenue, as the outcome would be still more taxes.

Such a proceeding would give every importer a chance to arrange with his suppliers to divide shipments as he now gets them and bring individual shipment below $250 and forward them per parcel post or otherwise, and he would have the benefit of being exempt from expert examination, classification, and appraisement, and especially to unscrupulous importers, it would give them every chance to violate all the present regulations as to consular requirements and they could easily carry on an enormous import business without being subject to the rules as to examination, classification, and appraisement of imports which now between $100 and $250 are subject to all the requirements of the customs rules and regulations with reference to examination classification and appraisement.

There would also be far more numerous importations than at present as instead of four or five importations per year they would increase the number to one or two per month and still come within the requirements of the proposed changed bill.

Section 17: The proposed elimination of the privilege of amending entries is entirely unnecessary and will result in innocent individuals or companies being subjected to excessive penalties, which many times are caused by circumstances over which such individuals have no control, and it would give the customs unchallenged authority to assess such penalties, and we believe that in practically all cases where there is an honest dispute between the importer and the customs it can readily be settled through proper forum, and if there are fraudu-

lent or deceptive importers there are other provisions of law which can be used in such cases and we further believe that the idea of additional duties should be eliminated entirely.

Since these are points which will directly affect the rank and file of importers and brokers and may be passed upon suggestions and recommendations of individuals desiring to establish a more drastic method of handling customs transactions we feel that the honorable Senators who compose the Finance Committee should withhold action on this legislation until they have an opportunity to inform themselves on these particular items.

We have heard for years that the customs laws and regulations were going to be simplified, but the proposed changes as shown in this bill complicates rather than simplifies the operations and procedure and practice in the importation of merchandise and does not make for any safer or more equitable procedure for the Government but rather has a tendency to instill the practice of a heavier iron hand. If there are going to be changes made let them be for the improvement of our present methods, instead of making the whole precedure more and more complicated.

We urgently request your cooperation in this matter in the best interests of both the Government and the importers of foreign merchandise.

Yours very truly,

CLOSE AND STEWART,
Per RALPH M. CLOSE.

THE CHAMBER OF COMMERCE OF KANSAS CITY,
Kansas City, Mo., February 28, 1952.

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: At the time that the Customs Simplification Act of 1951 was before the House of Representatives, the Kansas City Chamber of Commerce expressed itself as being in favor of the enactment of this bill.

The foreign trade committee has given consideration to H. R. 5505, the revamped Customs Simplification Act of 1951, which is now before the Senate Finance Committee, and heartily endorses this proposed legislation. However, we should like to recommend for your consideration the following changes:

(1) That amendments of entries should be permitted. However, once a collector has determined the duty, it should not be permitted to be changed upward. On the other hand, if the importer desires to lower the rate, he should be permitted to make an amendment to that effect within 60 days and also have the right to undertake to make an appeal.

(2) Section 13, the collector should advise in each case whether he used the export value or the United States value. The lower of the two should be used, not the higher. It is recommended that the collector should use, when determining the latter, actual commissions, profits or other deductions and not arbitrarily limited amounts.

The careful and favorable consideration by your committee of H. R. 5505 and the changes suggested above will be greatly appreciated by the import interests of Kansas City.

Very truly yours,

ARTHUR O. TERREL,
Chairman, Foreign Trade Committee.

PRINCETON UNIVERSITY,
THE LIBRARY,
Princeton, N. J., February 29, 1952.

Hon. H. ALEXANDER SMITH,
United States Senate, Washington, D .C.

DEAR SENATOR SMITH: The House bill concerning the Customs Simplification Act, H. R. 5505, has been accepted by the Senate Finance Committee, and I understand that the committee is accepting the wording of the House bill instead of introducing similar legislation. Libraries are particularly interested in section 15, which is on pages 15 and 16 of Report No. 1089, Eighty-second Congress, first session, and we hope that the informal entry of books can be handled in accordance with that section so far as libraries are concerned.

Sincerely yours,

LAWRENCE HEYL, *Associate Librarian.*

NATIONAL ASSOCIATION OF WASTE MATERIAL DEALERS, INC.,
New York, N. Y., April 1, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance, United States Senate,
Washington, D. C.

DEAR SIR: We understand that the Committee on Finance, United States Senate, of which you are chairman, is considering H. R. 5505, passed by the House of Representatives in the first session of the Eighty-second Congress and known as the Customs Simplication Act of 1951.

We hereby go on record with your committee that our seven commodity divisions, comprising the National Association of Waste Material Dealers, Inc., are unanimously in favor of this bill being enacted into law during the present session of the Congress.

We shall appreciate your presenting this letter to the Committee on Finance and sincerely hope that that it will take favorable action on it, and that it will be enacted into law promptly.

Respectfully submitted.

CLINTON M. WHITE,
Executive Vice President.

THE PURCELL CO., INC.,
Lexington, Ky., March 28, 1952.

Senator TOM UNDERWOOD,
Washington, D. C.

DEAR TOM: I have just read an article on the Customs Simplification Act, H. R. 5505, which I understand is before the Senate Finance Committee at this time, and I hope you feel that this bill should be opposed, as I believe it would be a terrific blow to the American retailer, as the majority of our items in our store, or any retail store, sells for less than $10, and if we are to have the additional competition of all foreign countries of their low-priced merchandise, that our business would be affected seriously.

You may not realize it, but the average sale in this store, even though we sell many large units such as furniture and major appliances, is less than $5, so that you can see how this competition would affect this one store alone. For your information, I received a catalog from England the last few days, in which they list about 50 items and by far the majority of these items are priced at less than $10, and of course, while we both know that the merchandise is not superior to the American made, many people would think it smart to have merchandise that is imported.

There sems to be what is called a "protected" provision in this bill, that is called the safeguard, which would prohibit c. o. d. shipments. Certainly anyone can realize this can have no effect whatever on purchasing this merchandise, and would certainly set up competition for the American businessman from the very countries that we are being taxed considerably to help.

I hope you will give this bill your consideration and take whatever steps possible to defeat same.

Sincerely,

(Signed) Lynn.
(Typed) LYNN E. GROGAN, *Vice President.*

AMERICAN WATCH ASSOCIATION, INC.,
New York, N. Y., April 1952.

Re H. R. 5505, an act to amend certain administrative provisions of the Tariff Act of 1930, and related laws, and for other purposes.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

SIR: We refer to bill H. R. 5505 to amend certain administrative provisions of the Tariff Act of 1930, and related laws, and for other purposes, the chief object of which we understand is the streamlining of customs procedures.

This association in general favors any legislative action which tends to simplify the administration of the customs laws, or which proposes constructive changes in technical customs procedure. However, we do not favor the inclusion

in such legislation of provisions which would result in injury to domestic business, including that of importers and retail dealers.

In this connection, we are particularly concerned about the amendment to section 321 of the present Tariff Act, proposed by section 11, subdivision (b) (2) of said H. R. 5505.

Section 7 of the Customs Administrative Act of 1938 (U. S. C., 1946 ed., title 19, sec. 1321) amended the Tariff Act of 1930 by adding at the end of part I of title III a new section entitled "Sec. 321. Administrative Exemptions," which reads in part as follows:

"Collectors of customs are hereby authorized, under such regulations as the Secretary of the Treasury may prescribe, * * *, to admit articles free of duty when the expense and inconvenience of collecting the duty accruing thereon would be disproportionate to the amount of such duty, but the aggregate value of articles imported by one person on one day and exempted from the payment of duty under the authority of this section shall not exceed $5 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States, or, $1 in any other case."

It will be noted that under the above-quoted provisions of said section 321, articles exceeding $1 in value, accompanying persons arriving in the United States but not for their personal or household use, and also articles exceeding $1 in value, imported otherwise than on the person or in the accompanying baggage of a person arriving in the United States, are not exempt from the payment of duty.

Section 11 of H. R. 5505 proposes certain amendments to said section 321, including the following:

"SEC. 321. ADMINISTRATIVE EXEMPTIONS

"(a) * * *.

"(b) Subject to such exceptions and under such regulations as the Secretary of the Treasury shall prescribe, articles (not including alcoholic beverages, manufactured tobacco, snuff, cigars, or cigarettes) shall be admitted free of duty and of any tax imposed on or by reason of importation in the following cases:

"(1) When the articles are on the person or in the accompanying baggage of an individual arriving in the United States who is not entitled to any exemption from duty or tax under paragraph 1798 (c) (2) of this Act and the aggregate value of such articles is not over $10, if the articles are intended for the personal or household use of such individual and not for sale, or $5 in any other case. This exemption shall not be allowed to any person more than once in one day.

"(2) When the articles are imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States and the aggregate value of all articles in the shipment is not over $10, if the articles are intended for the personal or household use of the consignee and not for sale, or $5 in any other case. The privilege of this subdivision shall not be granted to any C. O. D. shipment or in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision.

"(c) The purpose of this section is to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected. Therefore, the Secretary of the Treasury is authorized by regulations to diminish any dollar amount specified heretofore in this section and to prescribe exceptions to any exemption provided for in this section whenever he finds that such diminutions or exceptions are consistent with the purpose above stated, or are for any reason necessary to protect the revenue or to prevent unlawful importations."

It will be noted that the proposed amendments provided by subdivisions (b) (1) and (2), quoted above, constitute a drastic departure from the former practice respecting the dutiable status of articles imported on the person or in the accompanying baggage of a person, and those imported otherwise than on the person or in the accompanying baggage of a person arriving in the United States. Since subdivision (b) (1) provides for articles imported on the person or in the accompanying baggage of an individual arriving in the United States, it is clear that subdivision (b) (2) applies exclusively to articles imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States.

We do not favor the amendment proposed by said subdivision (b) (2) and desire to record our firm opposition thereto. The members of this association are convinced from their experience in the domestic watch industry that the right to import articles free of duty and tax, as provided in proposed subdivision

(b) (2), to an aggregate value of $10, when intended for the personal or household use of the consignee and not for sale, or to an aggregate value of $5 in any other case, will cause much hardship and result in serious injury to a large number of domestic retail dealers, as well as to manufacturers, wholesalers, and importers engaged in business in this country.

The members of this association are engaged in the wholesale watch business in the United States and represent a substantial portion of that industry. The majority of our members produce watches in this country with the use of imported and domestic materials. Watches are also imported complete by some of our members and all of these watches, whether produced in this country or imported complete, are merchandised through over 30,000 retail jewelers, department stores, and other retail outlets. Past experience has shown that the watch industry is a highly competitive one and that customs duties, and the retail excise taxes, are an important consideration in the price the ultimate consumer pays for our products.

So, with respect to watches, if proposed subdivision (b) (2) is enacted into law in its present form, it would provide an opportunity for any number of alert domestic and foreign persons or firms to establish foreign businesses to supply directly to consumers in this country, for their peronal use, millions of watches that are now supplied by those engaged in the domestic watch business, and at prices which it would be impossible for the domestic firms to meet. Under subdivision (b) (2) watches could be advertised here for purchase and importation directly by consumers at prices not including customs duty and retail excise tax, and this would constitute such a tremendous appeal to the buyers that the volume of such business quickly would grow to substantial proportions. Domestic retail dealers could not possibly compete pricewise with foreign sellers engaged in that kind of business.

The effect of subdivision (b) (2) is to bypass the regular importers, distributors, and retail dealers. Transactions under this proposed provision would avoid not only customs duties and excise taxes, but also sales taxes, and the costs usually incurred by those engaged in the importing and entry of merchandise into this country, as well as Federal and State income taxes on the profits, and all other provisions relating to social security taxes, unemployment taxes, and similar obligations. The volume of watches supplied under this proposed provision, under such conditions, rapidly would reach at least 3 million units a year and in time probably would materially exceed this figure.

Under such circumstances, the low and medium priced watch business of the retail jewelers and others dealing in such watches would be virtually ruined, with the result that the business of the regular watch importers, manufacturers, and distributors, who are the suppliers of the retail jewelers, likewise would be seriously injured.

It is obvious that what we have stated concerning the direct purchase of watches by consumers from foreign suppliers applies with equal force to thousands of other items which could be imported under subdivision (b) (2) free of duty and excise tax, and of the other obligations above mentioned, if this proposed amendment is enacted into law. Some of the more important goods would include perfumes and other toilet articles, costume jewelry, wearing apparel, shoes and other leather goods, glassware, hardware and tools, and foodstuff. The business of all of the regular domestic manufacturers and producers, importers, wholesalers, and retail dealers handing such items, and hundreds of others, unquestionably would be adversely affected by the imports that would surely follow the passage of said amendment.

The tremendous possibilities offered by proposed subdivision (b) (2) undoubtedly would be taken advantage of by many foreign suppliers at the earliest moment after enactment. Also, domestic suppliers could open branches in contiguous countries, such as Canada and Mexico, for the purpose of availing themselves of the benefits to be derived by doing the business possible under this proposed amendment.

We recognize that under proposed subdivision (c) of section 321, the Secretary of the Treasury is given the power, in his discretion, to reduce any dollar amount specified in the said section, and to prescribe exceptions to the exemptions provided therein when deemed necessary to protect the revenue. Also, that in report No. 1089 to accompany H. R. 5505, the Committee on Ways and Means said, respecting section 11 (p. 13), as follows:

"* * *. It is the desire of the committee that the Secretary of the Treasury shall exercise his authority under this section in such a manner that the section will not be subjected to abuses by mail-order businesses engaging in the direct shipment of dutiable articles to purchasers in the United States."

However, even though the Secretary of the Treasury would have the authority to take remedial action under said subdivision (c), and to correct abuses which might arise, it would, we submit, be almost impossible to cover the vast range of items within the scope of subdivision (b) (2) with regulations and exceptions, without more or less nullifying the privileges granted by that subdivision. In the meantime, the injury resulting from the imports would be suffered. Therefore, it would seem appropriate to take steps at this time that will eliminate the danger inherent in the said subdivision.

This could be accomplished very simply by deleting entirely from section 11 the proposed subdivision (b) (2), and reducing to $1 the figure $5, which now appears in subdivision (b) (1), line 16, page 15 of the bill, which action we strongly recommend be taken.

If, however, the committee favors the separate provisions for articles imported on the person or in the accompanying baggage of an individual, and for those imported otherwise than on the person or in the accompanying baggage, then we suggest, in the alternative, that the figure $10, in subdivision (b) (2), appearing in line 22, page 15, be reduced to $1, and the figure $5, in line 24, likewise be reduced to $1.

If it is finally decided neither to eliminate subdivision (b) (2) nor to change the present value provisions of subdivisions (b) (1) and (2), then we suggest that all items subject to the retail-excise tax should be excluded from the provisions of said subdivisions (b) (1) and (2), because the entry of certain items free of duty is a sufficient advantage to an individual and should not be extended to include those also subject to retail excise tax. This could be accomplished by amending the exceptions provided in subdivision (b) to read as follows:

"* * * (not including alcoholic beverages, manufactured tobacco, snuff, cigars, cigarettes, or any article or material subject to the retail excise tax)."

It is submitted that favorable consideration of one or the other of the recommendations and suggestions outlined above is not only desirable but necessary to prevent a serious situation that will rapidly develop, and affect adversely the various domestic businesses hereinbefore mentioned if the said proposed subdivision (b) (2) is enacted into law in its present form.

Respectfully,

AMERICAN WATCH ASSOCIATION, INC.
S. RALPH LAZRUS, *President.*
WILLIAM H. FOX, *Counsel.*

R. F. DOWNING & CO., INC.,
New York, April 17, 1952.

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: I am addressing you in connection with the customs simplification bill, H. R. 5505, which will be the object of public hearings before the Senate Committee on Finance starting Tuesday, April 22, 1952.

In common with many other customs brokers, I am concerned over a provision in the pending measure which would authorize free entry for "noncommercial" shipments valued at $10 or less. Increase from the present limit of $1 value is understood to be favored by the Treasury Department on the premise it would reduce work for customs personnel and expedite procedure.

Aside from the possible damage to legitimate importers and the likelihood of encouraging a greatly increased volume of small packages from abroad by parcel post and air, I am convinced the proposed change would add greatly to the work for Customs and quite likely pose a threat to revenue. The only way to determine whether a package should have free entry for value under $10 would be to examine the contents and obtain a shippers invoice. Hence, it would be no saving in work or time. It would actually make matters worse because of eagerness on the part of shippers abroad and persons in this country

to get apparel, books, hardware, and countless small items. At the same time, it would harm the legitimate importer now paying duty and handling such goods in quantity.

I have been a customs broker for 30 years and at one time head of Foreign Freight Forwarders and Brokers at the port of New York. I was also a candidate for Congress on the Democratic ticket from the Sixth District, New Jersey, in 1944 and 1946. If you would desire further information, I shall be pleased to respond at any time.

Yours very truly,

R. F. DOWNING & CO., INC.,
(Signed) Walter H. Van Hoesen,
(Typed) W. H. VAN HOESEN, *President.*

Senator HOEY. This concludes the schedule of witnesses for this morning. The committee will now take a recess until tomorrow morning at 10 o'clock.

(Whereupon, at 11:10 a. m., the committee recessed, to reconvene at 10 a. m. Wednesday, April 23, 1952.)

CUSTOMS SIMPLIFICATION ACT

WEDNESDAY, APRIL 23, 1952

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 312, Senate Office Building, Senator Clyde R. Hoey presiding.

Present: Senators Hoey, Kerr, Frear, and Williams.

Also present: Elizabeth B. Springer, chief clerk; and Serge N. Benson, professional staff member.

Senator HOEY. The committee will come to order, please.

Mr. Wayne C. Taylor?

Mr. TAYLOR. Yes, sir.

Senator HOEY. Mr. Taylor, do you have a statement you would like to make at this time? If you do, will you give your name and address to the reporter?

STATEMENT OF WAYNE C. TAYLOR, CONSULTANT, MUTUAL SECURITY AGENCY

Mr. TAYLOR. My name is Wayne C. Taylor, and I live in Heathsville, Va., sir; I am a consultant to the Mutual Security Agency.

Mr. Chairman, the Mutual Security Agency strongly supports the position taken by its predecessor agency, the Economic Cooperation Administration, in the letter of February 1, 1951, from Mr. William C. Foster, the Administrator, to the Honorable R. L. Doughton, chairman of the Ways and Means Committee. In this letter Mr. Foster pointed out that the passage of H. R. 1535 would go a long way toward clearing up the numerous uncertainties and complexities of United States customs procedures.

The Mutual Security Agency wishes to take this opportunity to reiterate our opinion that the simplification of customs procedures would make a substantial contribution to the fostering of a mutually advantageous and permanent increase in trade between Europe and the United States. As you know, one of the most serious economic problems that ECA, and now MSA, had to deal with in Western Europe was the existence of a substantial deficit in Europe's trade with the United States. While this deficit for a brief period tended to disappear under the pressure of the mobilization effort, the basic causes continue to exist and will continue to threaten the security of the European economy and the success of our mutual defense efforts with our NATO and other European allies. There is no question that the complexities and uncertainties of customs procedure, which the proposed bill seeks to eliminate, have been a major deterrent to European

sellers new to the American market. The ECA received a great number of complaints from Europeans about difficulties they have had, or fear, from United States customs. The passage of the proposed bill would not only give valuable assurance to Europeans of America's genuine interest in fostering European trade but would also remove many actual barriers inherent in present customs machinery.

As far as Mutual Security Agency's program is concerned some features of the proposed legislation stand out as of particular importance. I have in mind the proposed revision of criteria for the valuation of imported articles the proposed removal of special-marking requirements, and the provision on countervailing duties.

Senator HOEY. Thank you very much, Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Senator HOEY. Mr. Rowland Jones, Jr. Have a seat, Mr. Jones.

STATEMENT OF ROWLAND JONES, JR., PRESIDENT, AMERICAN RETAIL FEDERATION

Mr. JONES. Good morning, Mr. Chairman.

Mr. Chairman, my name is Rowland Jones, Jr. I am president of the American Retail Federation, and I would ask leave to file a short brief with your committee and only hit the high spots of that brief orally.

Senator HOEY. That will be entirely agreeable. The entire brief will be placed in the record.

Mr. JONES. Attached to the statement is a list of the 22 national retail associations, and 34 State retail associations, which are members of the American Retail Federation.

Senator HOEY. They will be included in the record.

Mr. JONES. Mr. Chairman, today we confine our interest in the pending bill to section 321 (b) (2) which would raise the duty-free import valuation from the present figure of $1 to $10.

The only argument in favor of this proposal that we have found in the discussion of this bill publicly has been the cost of handling small packages through customs. While that may be a matter of importance to the Government and in the matter of cost of administering our customs and our imports, we think a large number of rather important considerations outweigh any saving which might accrue to the Government.

So far as we know, all that the Customs Service claims for this section of the bill is that it would have the effect of saving a considerable amount of money in the processing of many packages in a value of $10 or less.

Senator HOEY. Have you any estimate of the difference in amount of revenues that would be derived under the present law and under this one?

Mr. JONES. Well, it is claimed by customs, we understand, that it costs on the average of $1.59 to process a package through customs.

Senator HOEY. And this bill changes it from $1 to $10?

Mr. JONES. That is right. They claim it would make that customs inspection unnecessary for packages to citizens of the United States for their personal use shipped from abroad—it would save the inspection costs.

A large number of other considerations, however, we think, negate any savings which might be made.

In the first place, we would expect that if this section were approved by the Congress, a very large increase in the volume of duty-free imports to come into this country in classifications of products of all kinds. It constitutes an open invitation for the establishment of foreign mail-order businesses, not only in European and Asiatic countries, but also substantially from Canada and Mexico.

The prestige of foreign imports is now substantial in this country, even with the duty, and I would offer for the record the language of an advertisement in the New York Times magazine. The rate for a single insertion in that magazine is $3,370, and it advertises women's capes and skirts, with duty, respectively, of $2.75 and $2.50, respectively, for the cape and the skirt, but with a price of $7.95 and $8.95, respectively. In other words, there must be a tremendous volume of this kind of imports now paying the duty.

You take the duty off and you give a tremendous impetus, and the package handling of customs, we are sure, would skyrocket in valuations of less than $10.

Senator HOEY. Does this bill eliminate the tax altogether where it is for personal use?

Mr. JONES. It is duty-free where it is shipped into this country to individuals for personal use and not for resale; it is duty-free up to $10.

(The advertisement referred to is as follows:)

[Advertisement from the New York Times, February 24, 1952]

ORDER YOUR "ROYAL PLAID" SEPARATES DIRECT FROM LONDON

The personal tartans of the royal princesses in the season's newest silhouettes—pencil slim or flaring skirt in finely woven 100-percent virgin British woolen, superbly tailored. The matching stole-cape, lavishly garlanded with wool fringe, to wear a dozen different ways. Richard Shops of Regent Street, London, are able to offer you these unbelievable buys only because of the current favorable rate of the dollar exchange to residents of the United States of America.

American sizes	10	12	14	16	18	Straight skirt, $7.95.
Waist	25	26	27	28	30	Flared skirt, $8.95.
Length	28	29	30	31	31	Matching stole-cape, $4.95.

Delivery will take about 4 weeks and you pay a customs duty of about $2.50 for the straight skirt, $2.75 for the flared skirt, and $2.50 for the matching stole-cape to your postman on receipt.

Cut this out and send to London

RICHARD SHOPS,
Dept. NT–1, 180 Regent Street,
London, England:

Please send me the following Dereta skirts. I understand if I am not satisfied the purchase price will be refunded.

Name _____
Address _____
City _____ Zone _____ State _____
Princess Elizabeth tartan ___ Flared $8.95; straight $7.95; sizes ___
Princess Margaret tartan ___ Flared $8.95; straight $7.95; sizes ___
Matching stole with either, $4.95 extra.
☐ Check ☐ International mail order

To speed delivery, airmail from anywhere in United States, 15 cents. We pay postage on all shipments

Mr. JONES. It should be borne in mind also that the $10 valuation represents the value in terms of foreign currencies and not American currencies, which makes that level higher than the $10 figure.

We are certain that there would be a great loss in customs revenue to the Government if this section were approved, and, second, I would call the committee's attention to the fact that in this country we have a broad system of excise taxes on a great many products which sell for less than $10 in this country.

We have the 20-percent excise taxes at retail, a very heavy tax which includes cosmetics, jewelry, and luggage, and in addition, many States have sales taxes on all products except food, ranging up to 3 percent.

In addition, we have excise taxes at the manufacturer's level as high as 25 percent of the manufacturer's price over a wide range of items.

To open our imports into this country duty-free on valuations up to $10 would give a tremendous incentive to American citizens to order all of these categories of goods from foreign mail-order companies which are certain would spring up immediately, and there would be a great loss to the Federal Treasury in these excise taxes because they would not be applicable on foreign imports from foreign countries; a great loss to the States in State sales taxes on those sales, which we believe would mushroom rapidly.

In addition, many cities in this country today, on top of that, have sales taxes which would not apply to these imports.

So, State, national, and local, the taxes lost on opening up this situation would be very substantial and far outweigh the cost of the inspection which the Customs Service offers as their main excuse for opening up these imports duty-free up to this figure.

There would also be the collateral loss to the Treasury and to the States in the collection of corporate and personal income taxes representing the profits on this business which would be diverted to foreign mail-order operations.

In addition also inevitably it would bring a loss of employment opportunity in the manufacturing establishments of this country.

There are some safeguards in this section of the bill giving the Secretary of the Treasury the authority to move in and abrogate the $10 rule, but we feel that that safeguard is not adequate, and in no sense would protect against the serious evils which we think would accrue.

Now, the argument may be made in regard to this section that it will be very helpful to foreign countries which are short on dollars and need it in their foreign exchange and need it for healthy rebuilding of foreign countries.

We think that this is not a matter—this is not a way in which we should help foreign nations increase their dollar balances and their exchange position.

We are doing that in many, many other ways in the amount of billions of dollars, and we do not think that this foreign aid should now be injected to relief for foreign mail-order importers into this country on the basis that it helps those foreign countries in their dollar exchange.

We also approve the airlines' proposal for informal entries into this country, which is a procedural matter, which would greatly simplify the incoming import packages by airlines.

The procedural situation now makes it very difficult for them to get prompt access to foreign shipments coming in by airlines, which are legitimate in every way.

Over-all, Mr. Chairman, the retailer of this country hopes that he will not be subjected to a mushrooming mail-order competition from abroad, particularly from Canada and Mexico where we are so close by. We know that tremendous businesses would be built in Canada and Mexico immediately, because of the savings in taxes that Americans can avoid by simply sending a mail order to Canada or Mexico, and we know we all like to avoid taxes wherever we can.

There is also that fascination of imported goods to American people—not always justified—but which is water on this wheel, and we hope this committee will not approve the increase from $1 to $10 of the import-duty freedom in the existing law, and to leave the existing law as it now stands in this regard.

Senator HOEY. Thank you for your appearance, Mr. Jones.

Mr. JONES. Thank you.

(The prepared statement of Mr. Jones is as follows:)

STATEMENT OF ROWLAND JONES, JR., PRESIDENT OF THE AMERICAN RETAIL FEDERATION, REGARDING H. R. 5505, THE CUSTOMS SIMPLIFICATION ACT OF 1951

My name is Rowland Jones, Jr. I am the president of the American Retail Federation, with offices at 1625 Eye Street NW., Washington, D. C.

The American Retail Federation is a federation of 21 national retail-trade associations and 32 State-wide retail associations. The names of the members of the federation are attached to this statement.

The members of the federation are opposed to that part of section 11 of H. R. 5505 which proposes to amend section 321 (b) (2) of the Tariff Act of 1930.

This section would permit the importation of articles—otherwise than on the person or in the baggage of an individual arriving in the United States—without payment of duty in cases where the aggregate value of all articles in a shipment did not exceed $10, and the articles are for personal or household use and not for resale. (An exception is made for alcoholic beverages and tobacco products, which are not eligible for this exemption.)

The purpose of this provision, according to the bill, is to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected.

The retail industry feels strongly that the enactment of this provision would not accomplish the purpose set forth in the bill, and that, on the contrary, substantial amounts of revenue would be lost to the Federal Government if this provision becomes law.

Large volume of imports seen

This provision, if enacted, would open the door to the establishment of a large importing business. It is a cordial invitation to foreign manufacturers and producers to advertise extensively in our newspapers and magazines that their articles can now be obtained duty-free. A certain glamour, undeserved in many cases, I think, attaches to imported articles at all times, and the American public is always quite conscious of any chance to buy an article at a reduced price, particularly if the reduction is caused by the elimination of a tax.

Foreign firms already have discovered that there is a good market in this country through mail-order business. As an example this advertisment offers imported skirts and capes direct from London. This advertisement, placed by the Richard Shops, cost the company $3,370 for one insertion. Obviously the Richard Shops must expect to sell a large number of skirts and capes to pay for the cost of the advertisement. It is easy to see how much more appeal the ad would have if instead of stating that the American customer will pay the postman about $2.50 duty on a $4.95 cape, or $2.75 on a 7.95 skirt, the advertisement could say that the items ordered direct would come in duty-free whereas the same imported item purchased in a local store would have a customs duty in its price.

Therefore, the retail industry feels that if this provision becomes law, an import business in articles of less than $10 in value—and it might be well to emphasize here that the $10 figure refers to foreign value, not domestic value, which would be a higher figure—this import business, I repeat, would mushroom

to vast proportions almost overnight, with a substantial loss to the Treasury, not only in customs duties, but also in internal revenue.

Customs loss could be material

The loss in customs duties, retailers believe, would be substantial. The purpose of this section of the bill, as already stated, is to relieve the Government of the expense of collecting small amounts of duty, where the cost of collection is in excess of the duty. The latest figure available on this cost is approximately $1.59 per mail package. However, in the advertisement just mentioned, the duties on items of less than $10 run considerably higher than this cost of collection. Duties on other items in the luxury or semiluxury class—and these would be the items most likely to appeal to American consumers—would probably exceed the collection cost in many cases also.

Loss in excise taxes

Aside from the loss in customs revenue there is the certain loss to the Treasury from diminished excise-tax collections. Many of the items which would appeal to American purchasers are those which are domestically taxed at 20 percent of the retail selling price, such as jewelry items, luggage, toilet preparations, and furs. Hundreds, if not thousands, of items in these categories would come within the less than $10 value classification. As imports they would not be subject to the 20 percent excise tax and the saving of a 20 percent tax would be a forceful appeal to the bargain-minded American customer.

In addition there are many items which might be imported under this provision which are subject to a 10 or 15 percent manufacturer's tax if produced domestically.

Included in these are small electric appliances, sporting goods, cigarette lighters, and some others.

The loss to the Treasury from the importation of these articles, which would come in duty-free and excise-tax-free, would be anything but inconsequential.

Loss in income-tax collections

The growth of a large import business from foreign manufacturers and dealers direct to the American consumer could not help but have a noticeable effect on income taxes as well.

Retailers who suffered from a loss in sales due to this foreign competition would have their profits reduced and pay less income taxes to the Federal Government. American manufacturers producing items in competition with the imported items would also suffer a loss in sales which would shortly be reflected in curtailed payrolls and unemployment.

Safeguards anything but adequate

The danger that this provision would open the doors to a mail-order business of vast proportions was clearly recognized in the hearings before the Ways and Means Committee, and admitted by Treasury representatives who testified on the bill. They felt, however, that they had provided ample safeguards in the provision in subsection (c) of the proposed new section 321, by giving the Secretary of the Treasury power to prescribe exceptions to this exemption and to reduce the $10 maximum whenever necessary to protect the revenue or prevent unlawful importations.

The Ways and Means Committee report also stated that it was the desire of the committee that the Secretary should use these powers to prevent abuses by mail-order business engaging in direct shipment of dutiable articles to purchasers in the United States.

The retail industry does not consider these safeguards as adequate

It would take some time to detect the extent to which the provision was being used to build up a mail-order business in this country, and it would take more time to determine the extent to which the Secretary should exercise his powers to make exceptions, to restrict certain articles from the privilege, or to reduce the $10 maximum to some lesser figure.

By that time the damage would have been done.

Faced with a definite loss of revenue in customs collections, excise-tax collections and damage to manufacturers, retailers, and their employees, it would be far better to keep the door closed by striking this section from the bill.

Summary

If that part of section 11 of H. R. 5505 which proposes to amend section 321 (b) (2) of the Tariff Act of 1930 is enacted—

1. The duties which wou'd be lost would in most instances exceed the cost of clearance by the Customs, with a direct loss of revenue to the Federal Government.

2. There would be an appreciable reduction in the collections of Federal retailers and manufacturers excise taxes, since the imported items would not be subject to these excise taxes.

3. These duty-free excise-tax-free shipments would cause a loss of business to American manufacturers and retailers, with a loss to the Treasury in income taxes.

4. In many lines an added result would be unemployment and a further potential reduction in income-tax collections.

For these reasons the retail industry requests that this section be stricken from H. R. 5505.

MEMBER ASSOCIATIONS OF THE AMERICAN RETAIL FEDERATION

National Associations:

American National Retail Jewelers Association
Association of Credit Apparel Stores, Inc.
Institute of Distribution, Inc.
Limited Price Variety Stores Association, Inc.
Mail Order Association of America
National Association of Chain Drug Stores
National Association of Credit Jewelers
National Association of Music Merchants, Inc.
National Association of Retail Clothiers and Furnishers
National Association of Shoe Chain Stores
National Retail Dry Goods Association
National Retail Farm Equipment Association
National Retail Furniture Association
National Retail Hardware Association
National Shoe Retailers Association
National Stationery and Office Equipment Association
National Foundation for Consumer Credit
National Luggage Dealers Association
American Retail Coal Association
Retail Paint and Wallpaper Distributors of America, Inc.
National Retail Tea and Coffee Merchants Association

State associations:

California Retailers Association
Colorado Retailers Association
Delaware Retailers Council
Florida State Retailers Association
Georgia Mercantile Association
Idaho Council of Retailers
Illinois Federation of Retail Associations
Associated Retailers of Indiana
Associated Retailers of Iowa, Inc.
Kentucky Merchants Association, Inc.
Louisiana Retailers Association
Maine Merchants Association, Inc.
Maryland Council of Retail Merchants, Inc.
Massachusetts Council of Retail Merchants
Michigan Retailers Association
Missouri Retailers' Association
Nevada Retail Merchants Association
Retail Merchants Association of New Jersey
New York State Council of Retail Merchants, Inc.
North Carolina Merchants Association, Inc.
Ohio State Council of Retail Merchants
Oklahoma Retail Merchants Association

State associations—Continued
Oregon State Retailers' Council
Pennsylvania Retailers' Association
Rhode Island Retail Association
Retail Merchants Association of South Dakota
Retail Merchants Association of Tennessee
Council of Texas Retailers' Association
Utah Council of Retailers
Virginia Retail Merchants Association, Inc.
Associated Retailers of Washington
West Virginia Retailers Association, Inc.

Senator HOEY. Mr. R. E. Canfield. Mr. Canfield, have a seat.

STATEMENT OF ROBERT E. CANFIELD, AMERICAN PAPER AND PULP ASSOCIATION

Mr. CANFIELD. My name is Robert E. Canfield, American Paper and Pulp Association, 122 East Forty-second Street, New York.

I have been before you privously, Senator.

Senator HOEY. Yes, I remember.

Mr. CANFIELD. Almost invariably before opposing some kind of legislation that was intended to implement administration policy. This time I am in the cheerful position of being with administration policy.

The only reason I am here is to talk about section 13, the valuation provision. It is the amendment of section 402 of the Tariff Act, and it appears on page 18 of the bill.

What I want to do is to point out that apparently in the zeal to simplify customs procedures, which certainly need simplifying, the drafters of the bill have inadvertently included provisions which are in direct conflict with one of the administration's pet policies, one with which most American industry, if not all, are in favor, namely, to try to rid foreign trade of the evils of cartel control, and to foster true competitive business abroad as we know it here at home.

Section 13, in its present form, would supply an economic incentive which would virtually guarantee cartel control of all exports to the United States, and I doubt very much if that is really intended by the administration or by the Congress.

Under the present law the courts have reluctantly held that foreign cartels can create a situation where the export price must be taken by the United States for tariff-evaluation purposes even though cartel-controlled, and even though it is placed far below home-market value, in order to reduce duty payments.

All they have to do to achieve that result is to create a controlled price in the home market which automatically removes it as a yardstick for evaluation purposes.

Under section 13 of this bill the cartels do not have to create the situation. The law does it for them. What was reluctant becomes accepted basic United States policy. The only deterrent to cartel control of the United States valuation base is eliminated.

The cartel can control the United States valuation base without having to rig the market at home.

The way section 13 accomplishes this result is simple: The present law says that the higher of the freely offered home market price and the export value is to be used as a base for valuation. Section 13

drops out the home-market test and says that the export value is the base. It defines "export value" as the price at which the merchandise is freely sold or offered for sale for exportation to the United States. That would not be so bad except that further on "freely sold or offered for sale" is defined.

I suppose it is true the Congress can pass a law that says, "for the purposes of this act black means white." It is a little starling to find it, however, and that, as near as I can figure out, is exactly what the definition does.

I think without the definition that anyone, any court, would agree that "freely sold or offered for sale" means sold in an uncontrolled, unrigged market at a price determined by free negotiation between buyer and seller. That is what the courts have held under the present act, with the reluctant result that they eliminate home-market value when it has been rigged.

But section 13 in its definition leaves out any such concept, and states that all that "freely sold" means is that the same price, whether rigged or not rigged, is offered to all buyers and that use of the product by the buyer is not restricted except in certain ways, the certain ways being the only important ones.

So, for all practical purposes what it says is that "freely offered" merely means that the same price, even though it is a rigged price, is offered to all buyers.

With that definition the exporter controls absolutely the valuation for United States tariff purposes.

Let us take a specific example of how that works: Take French cigarette paper. It happens to be controlled completely by Regie, the French Government tobacco monopoly. The price at home in the French market currently is $4.40 per bobbin. The export price generally to other countries than the United States ranges from $4 to $4.50 per bobbin. The export price to the United States is $2.35 per bobbin. Under the present act the duty would be charged on the $4.40 foreign home market value price, except that it is a rigged price.

Under the new act that would not be taken into account, rigged or not rigged, and the rigged price of $2.35, the export price to the United States, would be the base on which we had to compute duties.

In February, which is the last month I have figures for here, the imports—they are quite small on this, but it just typifies the whole situation—totaled a value of $15,000 and some-odd, on this $2.35 base.

On the home-market value, it would have been $28,500. The duty actually collected on the February shipment was $3,423, which it would be under this new act.

On a correct valuation the duty would have been $6,200, almost a hundred percent higher.

Now, it seems to me axiomatic that when Congress fixed ad valorem duties, and almost all of our duties are ad valorem in whole or in part, that they meant that the value was a real value, not a rigged-up value for the purpose of limiting the amount of duty that people would have to pay, and it seems to me axiomatic also that if we are trying, as the administration states as a basic policy, to get rid of cartels throughout the world in order to free up trade, that we should not pass a law that invites cartel control of things, and almost, as a matter of economics, forces it.

If somebody is in a position to cut his duty by 50 percent merely by doing what he can do under his own laws, but what would end him up in jail here, he is certainly going to do it.

Senator HOEY. Have you any suggestion to make about any changes you think are proper?

Mr. CANFIELD. Yes; I think it would be quite simple to do, sir.

Senator HOEY. You might put in the record any suggestions you might have by way of amendment.

Mr. CANFIELD. I shall do that.

I would think that what we ought to do if we are trying to make a real value is to say to foreigners in effect, "Do you value this stuff for import purposes on the basis of a free market price, not the way it is defined in this act, but the way people mean it when they say 'free.' If you have not got a free market price, then take our American free market price as a criterion. If you don't want to value your imports on that basis, establish a free market of your own."

Now, to do that, all that would be required in the way of amendment of this bill would be this: On page 18, after line 10, insert a new clause which says:

If neither the export value, the United States value, nor the comparative value can be ascertained satisfactorily, then the American selling price of comparable merchandise—

Then there would be some changes of numbering.

The next addition would be in line 12 on that same page. To strike out the word "nor" and to insert after the word "value," the words "nor the American selling price of comparable goods." Then there will again be some numbering changes.

On page 22 there should be a new definition inserted of what we mean by comparable merchandise, because I have used that phrase, and that will be,

merchandise manufactured or produced in the United States of like materials used for the same purpose and of approximately equal commercial value as the merchandise undergoing appraisement.

That language is taken right out of the bill, from another clause.

There will be some more numeral changes, and then in line 18 on page 22, the basic change: In the definition of "freely sold or offered for sale" there should be inserted, after the word "wholesale" in the second line of the definition, and that is on line 18, the words:

at prices determined without agreement with or compulsion by any other seller, group of sellers, or Government agency—

and so forth.

Senator HOEY. That would be merely inserted in line 18?

Mr. CANFIELD. Line 18.

Those simple changes would assure that duty valuations were made on the basis of real value and not rigged value.

Senator HOEY. Yes. Thank you very much, Mr. Canfield.

Mr. CANFIELD. Thank you, sir.

Senator HOEY. Mr. John Ray.

STATEMENT OF JOHN RAY, CHAIRMAN, IMPORT AND CUSTOMS COMMITTEE, DETROIT BOARD OF COMMERCE

Mr. RAY. My name is John C. Ray, of Detroit, Mich. I am chairman of the import and customs committee of the Detroit Board of Commerce, and I am appearing here this morning on behalf of the Detroit Board of Commerce.

The Detroit Board of Commerce, representing the many varied, vast and diversified industries and businesses operating within the Detroit area whose connections and investments are extended throughout the world, has for the past several years been concerned with the cumbersome, complicated, and unnecessary United States customs regulations and restrictions, and we believe that they have created a needless hardship for the United States importers and thereby had an adverse effect upon the United States exporters, consumers, and the employment of labor.

The board of commerce, by appropriate resolution, favors the adoption of the Customs Simplification Act.

There may be avenues of dissent with certain particulars of the act with which we, however, are not concerned. We are only concerned with the broad aspects of the act and urge its adoption.

Our port ranks fourth as far as dollar volume of imports are concerned, and we have been subjected to considerable annoyances and delays in making our entries at the port of Detroit. These annoyances and delays have not been occasioned by any means by any inefficiency on the part of the customs, but are largely attributed to the complexities of the present act.

Even though our volume of business, customs business, at the port of Detroit has increased over 300 percent since 1937, the personnel of the collector has not been increased at this particular port proportionately.

We feel that the delays have been occasioned to a large extent by the complexities of the valuation of importations, which section 13 of the proposed act is designed to correct.

We feel that doing away with the determination of foreign value will remove the necessity for making foreign investigations which take so much time, and oftentimes it may be a year or two years and three, and sometimes longer, before an importer will find what the appraiser values his merchadise at, and oftentimes that valuation is different from the entered value, and the profit is turned into a loss.

It certainly is a very unrealistic and unbusinesslike way of handling importations, and we feel that section 13 of the proposed act will go a long way toward correcting this evil.

Senator HOEY. I may say in this connection, Mr. Ray, if you would like to have your full statement appear in the record and refer to such parts as you want to now, you may do so.

Mr. RAY. Yes, I would; I am just trying to save time here.

Senator HOEY. Just refer to such parts as you wish, and your full statement will go in the record.

Mr. RAY. Yes.

We also feel that section 17 of the proposed act dealing with the amendment of entries and duties on undervaluation is a particularly good and constructive step toward improving international trade, and we wholeheartedly recommend its adoption.

Under sections 489 and 503 of the present law, the importer must give the final appraised value at his peril, subjecting himself to an undervaluation duty if he fixes too low a figure, and if, to be on the safe side, he fixes it too high, he receives no benefit from the final appraisement if it happens to be less than the entered value.

The present law also provides an additional undervaluation duty of 1 percent on the final appraised value of the merchandise for each 1 percent that such final value exceeds the value as entered by the importer, and if the appraised value exceeds the entered value by more than 100 percent, the entry will be considered presumptively fraudulent and the merchandise is subject to seizure and forefeiture.

The present section 489, with its complexities and the heavy penalties and costs which can be incurred under it, has been a particular bug-a-boo to international trade.

There have been instances in our area of severe penalties being incurred innocently under that particular section, Mr. Chairman.

Under section 17 of the proposed act this would be eliminated, and importers who are cooperative with customs officials in making full disclosure of all particulars on entry need no longer fear incurring additional penalty duties because of undervaluation. Section 17 of the proposed act also repeals the present unfair provision that where the importer's entered or declared value is higher than the final appraised value, the importer's entered value nevertheless becomes the dutiable value. This is tantamount to overpaying one's own income tax and not being able to recover such overpayment.

Along that line in respect to section 17, I would also recommend, or rather the Board of Commerce of Detroit recommends, the retention of the right of the importer to amend his entries. I believe that right should be protected and respected.

Senator KERR. Which right is that? Say that again.

Mr. RAY. That is the right of the importer to amend his entries at any time prior to the appraisement.

Senator HOEY. On customs?

Mr. RAY. Yes.

Along section 17, we would also recommend that a time limit be placed on the time in which the appraiser of customs has to make his appraisement. At the present time he may take anywhere from a year to 2 years, depending upon the difficulties that he encounters in obtaining values. That is because of the complexities attaching to foreign valuation, where the treasury attachés and agents in foreign countries make determinations of what the foreign value may be.

Well, the customs simplification will do away with the foreign value and the need for making foreign investigations will no longer be inherent or necessary.

However, that may not still obviate certain investigations, and we believe they should not be too extended. We feel that 120 days or 180 days are sufficient for an appraiser to make his determination of value; and somewhat similar to your income-tax laws, if he cannot make his determination in that length of time he could request of the importer an additional 30 days to make his valuation; that is, to have

the importer waive the period of time the statute provides, the statutory time, and if the importer would not consent to such a waiver, why, then, the appraiser could go ahead and make his appraisement on the basis of the facts which he has before him. It would be in the nature of a jeopardy appraisement, so to speak, from which the importer could appeal if he would. But to extend the time beyond 6 months, I think, is very unrealistic and unbusinesslike, and keeps a businessman unduly in suspense as to what the ultimate value of his importation might be.

Senator KERR. You do not think that the extension of the time changes the value and that, therefore, since it does not, that the declaration and fixation of it should be expedited?

Mr. RAY. That is right.

We also feel that section 19 of the proposed act, dealing with correction of errors and mistakes, is a salutary improvement over the present act permitting correction of errors, typographical errors, clerical errors at any time. It is a sound improvement of the present act. What is a clerical error has been construed by the courts and has been restricted in its definition, and the proposed section will do a lot toward removing the confusion and the inequities which attach to the present law.

In conclusion, we strongly urge the enactment of the Customs Simplification Act of 1951 at the present session of Congress. Overhauling and revision of our tariff laws has long been overdue. It is extremely important for business to have a fairly exact knowledge of the costs of the products bought and sold by it, or of the materials entering into the products manufactured by it.

The proposed act will permit importers to calculate their landed costs with some degree of certainty, and should expedite valuations at the customshouse. The proposed act will also eliminate the horror and injustice of having additional penal duties assessed for undervaluation and the inability to recover overpayments on entries, and will also remove a number of other minor annoyances and anachronisms inherent in the present tariff laws.

Senator KERR (presiding). All right, Mr. Ray. Thank you for your appearance and your testimony.

Mr. RAY. Thank you.

(The prepared statement of Mr. Ray is as follows:)

STATEMENT OF JOHN C. RAY, CHAIRMAN, IMPORT AND CUSTOMS COMMITTEE OF THE DETROIT BOARD OF COMMERCE, RE CUSTOMS SIMPLIFICATION ACT OF 1951 (H. R. 1535)

The Detroit Board of Commerce, by appropriate resolution, favors the enactment of the Customs Simplification Act of 1951 for the following reasons:

The customs port of Detroit is a major port of entry and exportation, ranking fourth in the total amount of dollar volume of imports and exports. It has been the sad experience of importers at Detroit that there have been, under the present customs laws, delays and other annoyances of various sorts in the entry of merchandise. These cannot be attributed to the inefficiency and inapplication of the customs service, which at Detroit still has the same number of employees that it had in 1937, even though the dollar volume of business handled by the office has increased substantially in the interim, but are chargeable to the antiquated complexities of the several provisions of the present Tariff Act of 1930, as amended.

The most provoking delays and annoyances are those involving valuation of imported merchandise. Under the present law, it is not at all infrequent to be advised by the customs long after the imported merchandise has been sold at

what was considered a reasonable profit, that the entered dutiable value was advanced by the appraiser and additional duties are to be paid, which in some instances wipes out the profit. Such experience with the customs laws has prompted some importers in our area to give up importing which is to the detriment of the well-being of the world economy which we as a nation are endeavoring to foster.

Although the proposed Customs Simplification Act contains numerous desirable amendments of the present Tariff Act, we shall limit our remarks to those sections of the proposed act which we feel are particularly important and constructive improvements over corresponding provisions of the present Tariff Act of 1930.

Although section 13 of the Customs Simplification Act of 1951 will not completely simplify valuation of importations, it should, however, remove one of the most serious obstacles to increase of international trade. Under the present law, on ad valorem duty importations the United States customs appraiser must determine and apply the higher of the foreign or export values, and if such are not available or determinable, then to apply the United States value of like or similar merchandise, and failing in this, then to apply a "cost of production" value. In some cases, notably chemicals, the American selling price is mandatorily applied in the first instance. To determine the higher of the foreign or export values under the existing laws makes for most of the delays in determining the valuations of importations. It is not at all uncommon, under the present law, for the customs to take a year and much more to complete their determinations on value. This is caused by the cumbersome investigations which must be made in the exporting country by our Treasury attachés.

During this period of investigation, the appraisement or valuation is withheld on all importations of like merchandise whose value is being investigated. The importer, during this period, in selling his merchandise at the entered valuation, does so at his peril as he may find that his entered value is not accepted as the correct valuation but a different and higher valuation is applied by the appraiser. Oftentimes, where there have been considerable importations of an item, such advanced or increased valuation may result in substantial sums of money being demanded of the importer. Obviously, this is an unrealistic and unbusinesslike way of treating importations. There are cases where several years were required to complete value determinations under existing laws and the final demands and increased duties were ruinous to the importer. There are instances where the importer was no longer in business at the time the valuation was completed.

The Customs Simplification Act of 1951 eliminates consideration of foreign value and makes export value the preferred method, if it can be determined. If export value cannot be ascertained, then the appraiser would endeavor to apply the defined "U. S. value" of like or similar merchandise. Failing in this, he would apply a "comparative value" which is the value of comparable merchandise from the same exporting country. Should the appraiser, however, be unable to determine either the "export value," the "U. S. value," or the "comparative value," then he would apply the "constructed value" which is the equivalent of the present "cost of production value." Elimination of foreign value and substitution of export value as the preferred initial method of valuation, will make valuations more realistic and more readily ascertainable to importers, and customs officials, and should speed up valuations.

The "U. S. value," "comparative value," and "constructed value" as defined in the proposed act, are substantial improvements over the present equivalent tariff provisions. The proposed valuations eliminate existing arbitrary or fictitious valuations and produce a method of valuation which is fair and equitable, based upon true values as near as can be determined.

Section 17 of the proposed act dealing with amendment of entries and duties on undervaluation is a particularly good and constructive step toward improving international trade, and we wholeheartedly recommend its adoption. Under sections 489 and 503 of the present law, the importer must give the final appraised value at his peril, subjecting himself to an undervaluation duty if he fixes too low a figure, and if, to be on the safe side, he fixes it too high, he received no benefit from the final appraisement if it happens to be less than the entered value. The present law also provides an additional undervaluation duty of 1 percent of the final appraised value of the merchandise for each 1 percent that such final value exceeds the value as "entered" by the importer, and if the appraised value exceeds the entered value by more than 100 percent, the entry will be considered presumptively fradulent and the merchandise is subject to seizure and forfeiture. The present section 489 with its complexities and the

heavy penalties and costs which can be incurred under it, has been a particular bugaboo to international trade. Under section 17 of the proposed act, this will be eliminated and importers who are cooperative with customs officials in making full disclosure of all particulars on entry, need no longer fear incurring additional penal duties because of undervaluation. Section 17 of the proposed act also repeals the present unfair provision that where the importer's entered or declared value is higher than the final appraised value, the importer's entered value, nevertheless, becomes the dutiable value. This is tantamount to overpaying one's income tax and not being able to recover such overpayment.

Section 19 of the proposed act, dealing with correction of errors and mistakes, will permit customs officials to correct any mistake adverse to the importer if discovered within 1 year after entry. Under the present law, such correction can only be made when the situation is the result of a "clerical error." Present interpretations of "clerical error" are too narrow. The inability of the customs service to correct patent mistakes or inadvertances with respect to entries, appraisements, liquidations, or other customs transactions, has on occasion caused importers in our area to complain bitterly over the unfair and harsh decisions that necessarily followed. The proposed change is replete with common sense and by all means should be adopted.

In conclusion, we strongly urge the enactment of the Customs Simplification Act of 1951 at the present session of Congress. Overhauling and revision of our tariff laws has been long overdue. It is extremely important for business to have a fairly exact knowledge of the costs of the products bought and sold by it, or of the materials entering into the products manufactured by it. The proposed act will permit importers to calculate their landed costs with some degree of certainty and should expedite valuations at the customshouse. The proposed act will also eliminate the horror and injustice of having additional penal duties assessed for undervaluation and inability to recover overpayments on entry, and will also remove a number of other minor annoyances and anachronisms inherent in the present tariff laws.

RESOLUTION OF THE DETROIT, MICH., CHAMBER OF COMMERCE

CUSTOMS SIMPLIFICATION ACT OF 1951 (H. R. 1535)

"The Detroit Board of Commerce representing the many vast and diversified industries and businesses operating within the Detroit area whose connections and investments are extended throughout the world, has for the past several years been concerned with the cumbersome, complicated, and unnecessary United States customs regulations and restrictions. We believe they have created a needless hardship for United States importers and thereby had an adverse effect upon the United States exporters, consumers, and the employment of labor.

"The board of directors of the Detroit Board of Commerce therefore respectfully urge the adoption of the Customs Simplification Act of 1951, H. R. 1535."

Adopted by the board of directors, April 21, 1952.

Respectfully submitted.

WILLIS H. HALL, *Secretary.*

Senator KERR. Mr. Tompkins?

Mr. TOMPKINS. Yes, sir.

Senator KERR. Sit right down, Mr. Tompkins.

STATEMENT OF ALLERTON deCORMIS TOMPKINS, COMMITTEE ON TRADE BARRIERS, UNITED STATES COUNCIL, INTERNATIONAL CHAMBER OF COMMERCE

Mr. TOMPKINS. My name is Allerton deCormis Tompkins, and before this committee I represent the American segment of the International Chamber of Commerce, known as the Committee on Trade Barriers, United States Council of the International Chamber of Commerce.

The United States Council is the American affiliate of the ICC, there being throughout the world 30 national affiliates of this organization, which has its headquarters in Paris, France.

Basically, the ICC is an international spokesman of businessmen on world economic affairs. Its purpose is to be broadly representative and to secure effective and constant action in improving world economic conditions.

We are very much in favor of the proposed legislation, H. R. 5505, which, if enacted into law, will materially decrease some of the administrative barriers that have plagued the United States import trade since the Tariff Act of 1930 was enacted many years ago. This proposed legislation is, however, only a small step in the right direction, as there are in addition many unnecessary administrative barriers that remain on the statute books, which needlessly harass international traders.

Senator KERR. Would you say that the purport of your testimony is that these barriers harass the traders or impede the trade?

Mr. TOMPKIN. Both, Mr. Chairman.

Senator KERR. Well, I think there would be some difference. Go ahead.

Mr. TOMPKINS. I have filed with your committee a mimeographed statement, which I request be placed in the record.

Senator KERR. It will be put into the record. Is that with your suggested revisions to section 13?

Mr. TOMPKINS. Yes, that is true. I have prepared two statements. One is a brief summary of what I would like to say before the committee, and the other is a mimeographed statement that relates specifically to section 13.

Senator KERR. All right.

Mr. TOMPKIN. Before going on to section 13, I would like to mention one or two points, bearing in mind that we are greatly in favor of this act, and request its adoption.

We do think that there are some minor important amendments that should be made in order to avoid unnecessary complications at a later date.

Briefly, the six points which we would like to have considered in addition to section 13 are:

Point No. 1, we urge that you do not deny to an importer the right to amend his entry. The importer should be permitted to amend his entry if he wants to do so. This point relates to section 17 (a) of the proposed bill.

Senator KERR. Have you prepared a suggested wording for the amendments you seek?

Mr. TOMPKINS. I have discussed the matter with other people who are appearing before this committee, and I have not attempted to enlarge upon the statements that they have made and are making to you.

Senator KERR. Will you or they, or have they, submitted suggested language?

Mr. TOMPKINS. Yes; they will.

Senator KERR. All right.

Mr. TOMPKINS. These points that I am covering now, these six points are being taken up by other people who have appeared or are appearing before you, and I just want to lend my support to their proposals.

Point No. 2, in section 17 (a), we urge that the payment of increased regular duties deriving from increased appraised values be made a condition precedent to an appeal to reappraisement.

Thus, an importer should be required to place on file the additional duties that may be due by reason of an increased value, so that all parties will be protected at a later date, and a liability will not accrue many years in the future at a time when the importer may well have gone out of business.

Point No. 3, in section 17 (b), we take the position that the proposed cure is even worse than the existing difficulty. The law as it is now worded, section 489, works a tremendous hardship on importers, and we heartily endorse its elimination. At the same time, we feel that the proposed revision is even worse. It is unnecessary; it is quite vicious, and it creates fraud temptation. In addition, it should have a ceiling, as the present law does.

To illustrate: It is impossible from a practical standpoint for a large importer of a great variety of items who imports merchandise through many United States ports to supply the appraiser at each and every port with all of his foreign correspondence bearing upon price negotiations and price changes. Particularly is this true in large department stores where buyers do not even disclose to their import department all of the correspondence, particularly on items that they do not purchase. Now, if those department stores have to furnish the appraisers at every port where they make entries with all of this correspondence, it is just impossible. Now, carrying that one step further, the proposed law says that if an importer does not make available all of that correspondence to each appraiser there will be penalties automatically. As a result, this section seems to be a dangerous temptation to appraisers who can be persuaded to shut their eyes to this pernicious and unnecessary law.

Moreover, a penalty already exists under the present law, under section 592, which is not involved in this bill, H. R. 5505.

This section 592 provides penalties for the willful failure to produce information. Thus, the proposed section 17 (b) will merely make another penalty for an act already covered by an existing penalty, or two separate penalties for the same wrong.

Point No. 4, in section 17 (c), we urge that you delete the requirement that an importer set forth a "substantial reason" for requesting a notice of appraisement.

Point No. 5, we also urge, as did the previous witness, that a time limit of 120 days or some specific limitation be placed upon the appraiser in making his appraisement under section 500 (a) of the Tariff Act.

Now, I believe one of the most feasible methods of doing this would be to have the law worded, as one of the witnesses who has not yet appeared before you is proposing, so that where the appraiser does not make his return within 120 days the importer can go to court and obtain a show-cause order as to why the appraiser does not make his return. In other words, if the appraiser has a good reason, it will appear in court, and if the importer knows of the good reason he will

not bring action. There should be some authorized procedure under which an importer can compel an appraiser to act, especially where there has been an arbitrary delay, nd unfortuntely those delays sometimes occur and create great difficulties.

The last point No. 6, in section 20 relating to the conversion of currency, we feel that the proposed section in satisfactory insofar as it goes, but that there should be an additional provision, as contained in the present law, under which the daily buying rates will be used where ever the daily buying rates vary by more than 5 percent from the values, the par values, as determined by the International Monetary Fund.

In other words, one should ordinarily use the rates of conversion as determined by the International Monetary Fund unless those rates do not effectively reflect commercial transactions, and that occurs when the daily buying rates are different by more than 5 percent. We feel that with that limitation, which is being argued by another witness before you, that section 20 would be quite satisfactory.

Now, I have distributed to you this second mimeographed sheet, entitled "Suggested Revisions to Section 13."

Senator KERR. That already has been placed in the record Mr. Tompkins.

Mr. TOMPKINS. Thank you. I would like to point out just three items that I feel are of particular importance there.

On my third footnote, it frequently happens that there are numerous values for an article. The price may be a dollar to some people, a dollar ten to other people, and a dollar twenty-five to still others, and yet they are all wholesale transactions falling within the wording of the statute any one of which coud be used as a basis for a dutiable value.

Now, we believe that you should authorize the appraiser to accept the sales price that is usually used, and not leave it to his discretion to accept any wholesale price he wants to. The thing should be more closely defined so that the appraiser would accept the "usual" price.

In point No. 11 of my footnotes—and this, I believe, is the most important defect that is envisaged in the present law—under the definition for "freely sold or offered for sale" the proposed statute requires that the price to "all purchasers" be considered. Now, the courts have interpreted that wording to mean that if the exporters do not offer the merchandise to everybody but confine their sales to certain buyers only, that you cannot consider the prices to such selected buyers.

By using the same language "all purchasers" this hardship will be continued. To illustrate: The law as now interpreted prevents dutiable values being used where the merchandise is offered only to wholesalers. Under the present law, where the exporter sells merchandise only to wholesalers, you cannot use the prices to such wholesalers because the courts say he does not offer that merchandise to all purchasers; he does not offer them to retailers or to consumers. The present law is impractical, and this proposal as now made will carry on that great hardship.

In this same respect, I think that the only limitation upon the purchasers should be to exclude those who are not financially independent of the sellers. In other words, you should consider the prices to all purchaser-importers who are not subsidiaries of the exporters, or vice versa. Where there is a family relationship or what I call a financial

relationship, I concede that it would be bad to rely upon the prices involved; but where there is no tie-in between the exporter and the importer, the customs official should be permitted to use the prices involved in such sales.

Senator KERR. You mean where there is freedom of bargaining position between the two——

Mr. TOMPKINS. Exactly.

Senator KERR (continuing). That the price used should be that generally available, I believe you say here, to those of a particular class who want to buy.

Mr. TOMPKINS. Exactly.

Now, the last point I want to bring up under valuation, is my footnote No. 12 on the question of similarity. I think my footnote covers it with appropriate illustrations, but I do feel that the definition of the term "similar merchandise" should be clarified so that some regard shall be given to similarity in quality of workmanship and in construction, otherwise you will have most unreasonable results.

I might further state that I have made some study of the dutiable-value laws of the United States as well as of foreign governments, and I am very much in sympathy, on the whole, with the section 13. I think it will go a long way toward resolving many of the complications. These suggestions I have made are somewhat technical and relate primarily to omissions that should be put in there.

In conclusion, we urge the passage of H. R. 5505. It contains many extremely helpful measures to reduce unnecessary administrative barriers in customs fields.

At the same time, we also request that you carefully examine into and favorably act on the suggestions as contained in the mimeographed arguments that have been submitted to your committee.

Thank you.

Senator KERR. All right, Mr. Tompkins, we thank you for your appearance and your statement.

(The statement by Mr. Tompkins, together with his suggested revisions referred to, is as follows:)

STATEMENT BY ALLERTON DEC. TOMPKINS, REPRESENTING THE COMMITTEE ON TRADE BARRIERS, UNITED STATES COUNCIL, INTERNATIONAL CHAMBER OF COMMERCE, NEW YORK, N. Y., IN CONNECTION WITH H. R. 5505

My name is Allerton deCormis Tompkins, 44 Whitehall Street, New York. I am an attorney specializing in customs law. Before this committee I represent the American segment of the International Chamber of Commerce, known as Committee on Trade Barriers of the United States Council, International Chamber of Commerce.

The United States council is the American affiliate of the International Chamber of Commerce, there being throughout the world 30 national affiliates of the International Chamber of Commerce which has its headquarters in Paris, France.

The International Chamber of Commerce was organized in 1919 following World War I. It is an international spokesman of businessmen on world economic affairs. In the International Chamber of Commerce manufacturers, bankers, industrialists, merchants, and traders pool their views and information and forge a common policy. Basically the International Chamber of Commerce's purpose is to be broadly representative and to secure effective and constant action in improving world economic conditions.

The United States council is a fact-finding group hoping to shed new light on vital questions in fields affecting international economic relations.

Our committees, composed of businessmen, economists, and experts from all walks of economic and business activities, deal with policy questions as well as with technical problems.

By making this information available we hoped to serve the welfare of free people everywhere in the quest for security and well-being.

The International Chamber of Commerce is very much in favor of the proposed legislation, H. R. 5505, which, if enacted into law, will materially decrease some of the administrative barriers that have plagued the United States import trade since the Tariff Act of 1930 was enacted many years ago. This proposed legislation is, however, only a small step in the right direction, as there are many additional unnecessary administrative barriers that still remain on the statute books to harass needlessly international traders.

First, let me say with considerable emphasis that my committee enthusiastically welcomes and favors this bill, and we pray that your committee will act favorably thereon. At the same time we find that certain specific items now contained in this proposed legislation really demand clarification or slight revisions. Unless these specific items are clarified, it appears this bill may create new trade barriers contrary to its avowed purpose.

It so happens that I have made a study of the dutiable value laws of this country, as well as those of other countries. I would like to take this opportunity of addressing myself primarily to certain technical defects that now exist in section 13 which can and should be corrected to facilitate its smooth operation.

Before going into the technical points of the pending bill, my committee requests that you carefully study and act favorably upon the following six points of revision that have already been called to your attention by other witnesses who are appearing or who have already testified before you:

1. In section 17 (a) we urge that you do not deny to an importer the right to amend his entry prior to appraisement. An importer should be permitted to amend before the appraiser acts if he finds that his entry figures are erroneous.

2. Under this same section 17 (a) we urge that the payment of the increased regular duties deriving from increased appraised values, be made a condition precedent to an appeal to reappraisement; thus placing the same safeguards on reappraisement action as are now enforced on protest action under section 515 of the tariff act. However, an importer should not be required to pay either penalties or section 489 additional duties as a prerequisite to a reappraisement appeal, or until there has been a final determination of the dutiable value.

3. In section 17 (b), we are convinced that the proposed cure is much worse than the existing disease. While we heartily endorse the elimination of section 489 as now contained in the Tariff Act of 1930, the proposed new successor is an abomination. A penalty already exists in section 592 of the tariff act for the willful failure to produce information required by customs officers. The proposed section 17 (b) not only would increase the dictatorial power of customs officials, but it would also make another penalty for an act already covered by an existing penalty; two separate penalties for the same wrong.

4. In section 17 (c), we urge that you delete the requirement that an importer must set forth a "substantial reason" for requesting a notice of appraisement. Customs officers should not be made judges of whether or not a request meets with their thoughts of a substantial reason.

5. We also urge that a time limit of 120 days be placed upon the appraiser in making his appraisement under section 500 (a) of the tariff act. Wherever an appraisement is not completed within 120 days an importer should have the right to bring legal action in the United States Customs Court against the appraiser to show cause why the entered values should not be accepted. The present unnecessary and unwarranted appraisement delays of innumerable years cause extreme hardships to foreign traders.

6. In section 20, we urge that this section be modified so as to avoid the necessity of using par values of the International Monetary Fund in any instance where such par values differ to a marked degree from the commercial buying rates. Thus, such a par value by International Monetary Fund should be used except where such a par value varies by more than 5 percent from the daily buying rate as determined by the Federal Reserve Bank of New York. Where the variance is more than 5 percent, then the daily rate of the Federal Reserve bank should be used.

Now in addition to the foregoing six points of revision I would like to call your attention to a number of technical suggestions in section 13, the dutiable-value provisions. Many of the following suggestions appear to be inadvertent oversights, but I feel that they are extremely important and should not be overlooked;

otherwise, unnecessary hardships are bound to arise. To clarify my suggestions, I have prepared and distributed to you a mimeographed statement which is self-explanatory.

In conclusion, I repeat that we urge the passage of H. R. 5505, as it contains many extremely helpful measures to reduce unnecessary customs administrative barriers. At the same time we respectfully request that you carefully examine into and act favorably upon all of the foregoing suggested corrections or revisions.

SUGGESTED REVISIONS TO SECTION 13 (SEC. 402 OF TARIFF ACT) H. R. 5505

(By Allerton deC. Tompkins)

(a) BASIS.—Except as otherwise specifically provided for, the value of imported merchandise for the purposes of this Act shall be—

(1) the export value;

(2) if the export value cannot be ascertained satisfactorily, then the United States value;

(3) if neither the export value nor the United States value can be ascertained satisfactorily, then the comparative value;

(4) if neither the export value, the United States value, nor the comparative value can be ascertained satisfactorily, then the constructed value; or

(5) in the case of an article with respect to which there is in effect under section 336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such domestic article.

Wherever the appraised value differs from the entered value, the appraiser shall specify the basis of value used by him.[1]

(b) EXPORT VALUE.—The export value of imported merchandise shall be [the market value or][2] the *usual*[3] price, at the time of exportation of the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other charges and expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

(c) UNITED STATES VALUE.—The United States value of imported merchandise shall be the *usual*[3] price, at the time of exportation to the United States of the merchandise undergoing appraisement; at which such or similar *imported*[4] merchandise is freely sold or offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

(1) any commission paid or agreed to be paid on merchandise secured otherwise than by purchase; or, on merchandise secured by purchase or agreement to purchase, the addition for profit and general expenses usually made by sellers in such market on imported merchandise of the same class or kind as the merchandise undergoing appraisement;

(2) the usual costs of transportation and insurance and other usual *charges and*[5] expenses from the place of shipment to the place of delivery,

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[1] The customs courts have held that since Congress has not indicated that the appraiser should specify his valuation bases, he is under no obligation to inform the importer about this fact. This lack of information places a severe and unnecessary hardship upon an importer who tries to ascertain the accuracy of an advanced appraised value.

[2] "The market value" is not similarly inserted in the definition of "United States value" (sec. 402 (c)). These words are unnecessary and add no additional points not already covered by the definition. If these words are left in the definition, then they should be similarly inserted in the definition of "United States value." Otherwise, an erroneous significance may be drawn by the courts from the difference between the two definitions.

[3] It is rare indeed that merchandise is freely sold to every purchaser in usual wholesale quantities at the same price. Usually there is a sliding scale of discounts dependent upon various factors peculiar to each trade, thus permitting wide differences of opinion, and frequent conflicts, about the proper price to be used. This source of complaint and conflict can be avoided by the selection of the most equitable price, viz—the usual price.

[4] The term "imported" is now contained in the definition of "United States value" in the Tariff Act of 1930. If this term is omitted, the courts may draw some erroneous significance therefrom. While under the definition of "such and similar merchandise" (sec. (h) (4) H. R. 5505) there is an implication that the merchandise must be imported, this important factor should not be left to inference and conjecture.

[5] If the words "charges and expenses" are found necessary as an important factor in computing constructed value (sec. (e) (3) H. R. 5505), then, to avoid erroneous inferences, similar phraseology should be inserted in sec. (c) (2).

not including any *charges and*[5] expense provided for in (1); and

(3) the ordinary customs duties and Federal taxes estimated to be payable on such or similar merchandise by reason of its importation or for which vendors at wholesale in the United States are ordinarily liable.

If such or similar merchandise was not so sold or offered at the time of exportation of the merchandise undergoing appraisement, the United States value shall be ascertained or estimated, subject to the foregoing specifications of this subsection, from the price at which such or similar *imported*[4] merchandise is freely sold or offered for sale *in the usual wholesale quantities and in the ordinary course of trade*[6] at the earliest date after such time of exportation but before the expiration of ninety days after the importation of the merchandise undergoing appraisement.

(d) COMPARATIVE VALUE.—The comparative value of imported merchandise shall be the equivalent of the export value as nearly as such equivalent may be ascertained or estimated on the basis of the export or United States value *at the time of exportation to the United States of the merchandise undergoing appraisement*[7] of other merchandise from the same country which is comparable in construction and use with the merchandise undergoing appraisement, with appropriate adjustments for differences in size, material, construction, texture, or other differences, *plus* (*after deducting any added container or covering costs and shipping charges and expenses in connection with the value of the comparable merchandise*) *the cost of all containers and coverings of whatever nature and all other charges and expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.*[8]

(e) CONSTRUCTED VALUE.—The constructed value of imported merchandise shall be the sum of—

(1) the cost of materials and of fabrication and other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an addition for general expenses and profit equal to that which producers in the country of production whose products are exported to the United States usually add in sales, in the usual wholesale quantities and in the ordinary course of trade, of merchandise of the same general class or kind as the merchandise undergoing appraisement; and *in the absence of evidence showing the additions by such other producers for general expenses and profit, the usual additions for general expenses and profit made by the producer of the merchandise undergoing appraisement in sales of merchandise of the same general class or kind, in the usual wholesale quantities and in the ordinary course of trade, may be added; and*[9]

(3) the cost of all containers and coverings of whatever nature, and all other charges and expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

(f) AMERICAN SELLING PRICE.—The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other charges and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely sold or offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer or owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

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[6] The present wording would permit fictitious and irregular prices to be used, without regard to whether or not such prices were fair, reasonable, or representative of ordinary trade conditions. The ommission of the suggested wording is apparently an oversight.

[7] The ommission of a specified time is apparently an oversight. Unless a definite time is mentioned, any price, quite different from a reasonably fair current price, can be used, even though in effect only after importation or long prior to exportation, resulting in the stimulation of wide conflicts and much confusion. Every other valuation basis in H. R. 5505 has a specified date criterion.

[8] The ommission of packing as a part of the comparative value is apparently an oversight. Every other valuation basis in H. R. 5505 includes actual packing costs as an addition to the unit value.

[9] It is frequently impossible for customs officers and importers to obtain cost of production data from disinterested competitor foreign manufacturers. Appraisers and the courts are frequently faced with this troublesome deficiency of evidence, resulting in conjecture and confusion that can and should be avoided.

(g) TAXES.—The value of imported merchandise ascertained or estimated in accordance with this section shall not include the amount of any internal tax, applicable within the country of origin or exportation, from which the merchandise undergoing appraisement has been exempted or has been or will be relieved by means of refund.

(h) DEFINITIONS.—As used in this section, the following terms shall have the meanings respectively indicated:

(1) "Freely sold or offered for sale"—sold or offered *for sale*[10] to (all)[11] purchasers at wholesale *who are financially independent of the seller*,[11] without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (A) are imposed or required by law, or (B) limit the price at which or the territory in which the merchandise may be resold, or (C) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

(2) "Ordinary course of trade"—the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement.

(3) "Purchasers at wholesale"—purchasers who buy in the usual wholesale quantities for industrial use or for resale otherwise than at retail; or, if there are no such purchasers, then (all)[11] other purchasers for resale who buy in the usual wholesale quantities; or, if there are no purchasers in either of the foregoing categories, then all other purchasers who buy in the usual wholesale quantities.

(4) "Such or similar merchandise"—the merchandise undergoing appraisement shall be considered "such" merchandise, and other merchandise shall be considered "such" merchandise if—

(A) it is identical in physical characteristics *and in quality of workmanship and construction*[12] and was produced in the same country by the same person, or

(B) when no value meeting the requirements of the definition of value under consideration can be ascertained or estimated under (A), the merchandise is identical in physical characteristics *and in quality of workmanship and construction*[12] and was produced by another person in the same country.

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[10] The omission of the words "for sale" is apparently an oversight. Unless these words are added, offerings that are not made in connection with pecuniary sales involving passage of title will have to be considered, such as loans, barters, consignments, etc.

[11] A seller rarely wants to sell to everybody, yet the customs courts now insist that dutiable values cannot be based on situations where the seller selects his buyers, or sells only to wholesalers or only to a particular class of purchasers. See *Pan American Lumber Co.* v. *United States* (Reap. Decis. 8018, decided June 15, 1951), and authorities therein cited, wherein it is stated:

"The expression 'all purchasers' does not mean the members of some association only, or 99 per centum of the purchasers, or those of a particular class, but all who care to buy."

The above interpretation of the term "all purchasers," as now enforced, imposes impossible situations and great confusion. A readoption by Congress of this phraseology will only confirm and add emphasis to this unfortunate interpretation. Almost every progressive foreign seller who desires to promote the sale of his product in the United States will appoint one or more United States representatives to promote the sale of the foreign product. That is the way foreign business is now primarily conducted. If all sales to such promoters and primary purchasers are cancelled for dutiable valuation purposes, as the present wording of H. R. 5505 now requires, then the proposed valuation changes in H. R. 5505 will leave intact one of the primary causes of complaint. This is the most important defect in the proposed valuation revisions.

The sales prices involved in all legitimate sales between buyers and sellers who do not own or control one another (the United States importer is a subsidiary of the foreign parent seller, or vice versa) should be accepted as a reference for valuation purposes. Any possible collusion between buyer and seller to manipulate invoice prices for the purpose of concealing actual sales prices is already covered by the penalty and forfeiture provisions. (See sec. 592 of Tariff Act of 1930.)

[12] Two articles may have the same physical characteristics but have vastly different values due to quality factors such as differences in workmanship or in construction. For instance, relative to workmanship, a statue produced by an art student will have the same physical characteristics as that by a well-known artist portraying the same subject matter, but the value of the former will bear no relation to the value of the latter. Relative to similarity in quality of construction, Vice Adm. Charles W. Fox pointed out this difference very nicely when testifying on March 3, 1952, before the House Armed Services Committee. He there produced two steel bearings that looked exactly alike, but one cost only 43 cents, and the other cost $4.38 because it was a precision bearing requiring exact tooling for use in a gyrocompass.

Merchandise shall be considered "similar" to the merchandise undergoing appraisement if it is not within the foregoing definition of "such" merchandise but—

(C) it was produced in the same country as the merchandise undergoing appraisement, by the same person, of like materials, is used for the same purpose, and is of approximately equal commercial value, or

(D) when no value meeting the requirements of the definition of value under consideration can be ascertained or estimated under (C), the merchandise is correspondingly similar and was produced by another person in the same country.

(5) "Usual wholesale quantities"—the quantities usually sold in the class of transactions in which the greater aggregate quantity of the "such or similar merchandise," in respect of which value is being ascertained or estimated, is sold in the market under consideration.

Senator KERR. Mr. Bennett, have a seat, sir.

STATEMENT OF FRED BENNETT, CHAIRMAN, IMPORT AND CUSTOMS COMMITTEE, COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.

Mr. BENNETT. My name is Fred Bennett. I appear as chairman of the customs and import committee of the Commerce and Industry Association of New York, Inc., an organization which includes in its membership more than a thousand firms directly interested in the importation of merchandise from abroad, and others directly associated with foreign trade in the field of transportation, banking and insurance.

Our association has for a long time been making efforts in cooperation with administration officials to find ways and means whereby the present procedures in the handling of import questions could be simplified.

We have recognized, as the Treasury Department has now recognized in this bill, that it is necessary to amend the present law in order to secure the needed authority to bring merchandise into this country under a modern and simplified procedure.

We, in principle, approve section 13 of the present bill which relates to the question of value. Incidentally, we are confining our remarks, Mr. Chairman, to three sections of the bill: Section 13, which relates to value, section 17 which relates to amendments and undervaluation, and section 20 which relates to currency.

Section 13 removes from the present law the basis of value known as foreign value, which has been a very cumbersome basis upon which to find a value for Customs purposes.

I am not going to deal, with your permission, Mr. Chairman, with the various suggestions that we have to make in respect of value, because they are changes in language intended to further the purpose of the Treasury Department, to clarify and simplify the law, and we ask permission to file these suggested changes in language with the committee, for the consideration of the committee and the Treasury Department.

Senator KERR. They may be received.

Mr. BENNETT. Thank you, sir.

The section relating to currency bothers us somewhat because of the provision which indicates that the basis for the first determination of the conversion rate shall be the International Monetary Fund.

Currency is one of the three important factors in the determination of duty. The three factors are the rate of duty, the value, and the conversion of currency.

Obviously, a conversion rate may very radically and drastically change the basis of duty for any importation.

We would prefer that the determination of the conversion rate be made by the Federal Reserve Board, based upon commercial transactions. We think that is more realistic of commercial transactions and more realistic of the economic situation at the time of the importation.

The Treasury Department apparently would like to use the international monetary fund rates because it would eliminate the use of a number of small fraction rates published by the Federal Reserve Board, as of necessity. We see no objection to using the international monetary fund rate as a guide or as a bench post, as Mr. Graham said the other day at the hearing, but we feel that the fundamental basis of the determinaton of the rate should be the Federal Reserve Board, and our reason for that is, in theory and principle, that the Tariff Act is a domestic statute, and that the participation of any other country in the determination of any part of that tariff is, to us, an obnoxious feature.

We realize that by reversing it and taking the Federal Reserve Board rate and using the international monetary fund as a check, brings about the same result in practice, but in principle, the basic rate is fixed by one of our own agencies in the United States, and we think that is where it belongs, and we would like to submit that for your consideration.

Section 17, which relates to the amendment of entries and undervaluation has already been touched on by Mr. Tompkins, by Mr. Ray, and it has been explained that the present law provides for an automatic penalty.

The proposed measure would eliminate the automatic penalty. That is a good feature, but in making a substitution the Treasury Department seems to us to have made some errors in the method of determination as to when undervaluation of duties shall be assessed.

On page 28 of the proposed bill it reads:

> if the consignee shall have failed to furnish the appraiser, before that officer has signed his report of value to the collector, all information required by customs officers which is relevant to the value of the merchandise and available to him at the time of entry or within a reasonable time thereafter, and all such information that is so available to the person, if any—

and so forth—we think that the provision may lead to confusion, and certainly to uncertainty as to the attitude of customs officers.

We speak of "all" information, we speak of "required" and we speak of "customs officers."

The port of New York is a place where we have a very large number of customs officers, many of whom may in some direct or indirect way have something to do with the valuation of merchandise. How they shall require the information is not specified nor is it specified that the Treasury Department shall promulgate regulations as to how the information is to be required, whether by questionnaire, by oral questions, by any other form.

Furthermore, it speaks of "all" information, which may mean a catch-all questionnaire or a catch-all form, which would leave the

importer in a position that anytime that he may innocently omit some information and that a particular customs officer, undesignated by law, may report that particular importation subject to undervaluation duties.

We think that the substitute should be eliminated from the bill altogether because other provisions of the law take care of the situation where an importer enters his merchandise irregularly, but if the Treasury Department, for administrative purposes, feels that some provision for additional duties should be in the law, then we urge upon the committee to place that provision in such language that there can never be a doubt as to the definiteness with which an importer conducts his business with the United States Government or the Government conducts its business with the United States citizen.

The present bill also, as Mr. Tompkins pointed out, deprives the importer of his right to amend. It establishes a procedure whereby if the value is to be changed, that the customs officer will change the value and, in effect, he will amend the entry.

The purpose of that is to eliminate a great deal of present work of amendment on the part of importers, and to that we have no objection, but we do not think that by giving the right of amendment to the Government—so-called amendment to the Government—that the right should be taken from the importer when he feels that he wants to make an affirmative declaration of a change of his original value, just the same as in the case of the income tax, if he has made a misstatement in his income tax he has a right within a reasonable time to change it.

Senator KERR. Illustrate for me an example of where he would want to amend his declaration of value.

Mr. BENNETT. Well, an importation will arrive today with documents from abroad which will show the price at which he bought the goods and will not show on those papers the price at which that manufacturer or other manufacturers in the country of exportation are offering the same kind of goods to other importers.

The price, for value purposes, is the price offered on the day of exportation, not the date of purchase. That information may come to him 2, 3, or 6 days after he has had his original papers. He has already made his entry because he wants his merchandise. So, with this additional information, which will show that his value was erroneous, he wants to correct that and make an affirmative declaration of what he believes to be the proper value for dutiable purposes.

Under the present law he can make that amendment. That particular value might be submitted to the appraiser, and the appraiser would not be agreeable to stating that value as his appraised value.

It is to these three sections, Mr. Chairman and members, that we direct our particular comments. The bill has very many features of merit; there are other parts of the customs laws which should be subject to consideration at this time or some other time, but these three items are the essence of the bill, and I have pointed out that the valuation section is in the main a very definite improvement of the present law, with some of the language changes that we have offered.

The currency question is a matter of principle or theory, as to where should be the basis of determination of the rate. But on the question of amendment and the question of the imposition of addi-

tional duties, we think there the proposed law needs a very definite reconsideration on the part of the draftsman.

Senator KERR. And you have provided the language which you think should be used?

Mr. BENNETT. I have not, Senator, but if you would like something offered in that way, I would be glad to try it.

Senator KERR. I think it would be well.

(The information referred to follows:)

Mr. BENNETT. I think that, Senator, is the substance of my remarks.

Senator KERR. All right, sir.

Mr. BENNETT. Thank you very much.

(The prepared statement of Mr. Bennett is as follows:)

STATEMENT PRESENTED BY FRED BENNETT, CHAIRMAN, IMPORT AND CUSTOMS COMMITTEE OF THE COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.

CUSTOMS SIMPLIFICATION ACT (H. R. 5505)

The Commerce and Industry Association of New York, Inc., established in 1897 as the Merchants' Association, is recognized as the chamber of commerce for the New York metropolitan area. Included within its membership there are approximately 1,000 firms directly interested in the importation of merchandise from abroad, and others directly associated with foreign trade in the fields of transportation, banking, and insurance. This association, therefore, has been very closely identified with foreign trade in all of its phases.

The association feels that now more than ever in the history of the United States our economic relations with other countries are of vital importance in the interest of world peace. With this in view, the association has worked consistently in the furtherance of cordial commercial relationships with those with whom we are engaged in international trade. Much depends, in connection with the importation of foreign goods, upon the methods of clearance of such merchandise upon its arrival in the United States; they should be as simple as practicable consistent with the purposes of our tariff structure. The association, through its import and customs committee, has cooperated with representatives of our Government on programs of simplification of procedure, but further progress in this direction depends upon a change in the present law.

Our committee has made a number of recommendations of changes in the Tariff Act of 1930 to bring about this objective. These have been presented to various Members of Congress and have been discussed with Government officials. Some of our proposals have been incorporated in H. R. 5505, the bill which is now before your committee for consideration. But these propsals, as written into the present bill and in the absence of other provisions which should be included, prevent this measure from fully meeting the desired object of simplification of customs procedure.

Nevertheless, the need for some of the changes which are intended to be effected by the present measure is of such immediate importance that the pasage of this bill should not be unduly delayed by attempting to broaden its present scope. We hope that Congress at some early date will give study to a plan for a complete review of our customs laws.

H. R. 5505 contains three sections which are of the essence of the measure insofar as they affect generally imports into the United States, and it is to these three sections that we confine our comments. The three sections are:

Section 13. Value.

Section 17. Amendment of entries and duties on undervaluation.

Section 20. Conversion of currency.

They should be retained in the bill but modified in language (*a*) to insure no deprivation of the substantial rights of importers, and (*b*) to meet adequately the administrative difficulties they are intended to eliminate.

SECTION 13. VALUE

The difficulties in the determination of the value upon which ad valorem duties are assessed under the existing law (*a*) have caused foreign manufacturers and importers to refrain from entering foreign goods in this market because of the

uncertainties attached to finding a value acceptable to customs; (*b*) have resulted in the prohibition of the importation of goods when the values were "ascertained" upon an unrealistic commercial basis; (*c*) have caused delays in the fixation of duties resulting in a heavy burden of work upon customs officials because of the length of time consumed before a final decision could be reached; and (*d*) have imposed burdensome expense on importers because of sudden demands for duties some time after entry of the merchandise, after selling prices in the United States have been fixed, and in many cases after goods have been sold and delivered. The files of the Treasury Department will reveal these conditions. The basis of value for dutiable purposes should be simple of application and in harmony with well-established commercial practices. On both counts the present law has failed.

The basis of value in the existing law (sec. 402 of the Tariff Act of 1930) which has created the most difficulties is foreign value. Foreign value calls for a determination of market conditions in the country of exportation in respect of the sale of goods for home consumption. It was adopted at a time when the United States economic structure was less imposing—when there was a closer similarity between market conditions abroad and those which existed in the United States. It has become evident in recent years that conditions of marketing and distribution of merchandise abroad are quite different in their characteristics from the methods of marketing and distributing in the United States, particularly when one compares the consumer population and geographical area of the United States; and, in addition, market conditions vary from country to country according to population, size, products, and distribution. No standards of valuation based on transactions in the home market of a country of exportation are possible without creating discrimination by reason of such differences.

From an administrative standpoint the United States Customs is faced with the necessity of obtaining facts from abroad. The information which is obtained is frequently open to question as to accuracy. Foreign manufacturers, with the best of intentions, do not always make available those facts upon which an appraisement can be satisfactorily made. Investigations by United States Government agents have had to be repeated two and three times before the appraiser of merchandise obtained facts upon which he believed he could proceed to arrive at a value. Delays have run into years before appraisement has been effected.

Manufacturers and sellers in foreign countries and, in some cases, their governments, do not like United States Treasury agents making inquiries as to production costs and methods of distribution in the home market, including prices for their own home customers, discounts, and other confidential data, none of which have a bearing upon the price at which merchandise is sold for export to the United States. Such inquiries do not contribute to good feeling.

The Treasury Department and all organizations which have had experience in the handling of imported merchandise are united in their opposition to the foreign-value basis of appraisement. It should be eliminated from the law and we fully endorse that section of H. R. 5505 which accomplishes this result.

Export value should be, as proposed, the first basis of appraisement. Such value can be readily ascertained. All of the transactions involving the sale of goods for export to the United States pass under the scrutiny of customs officials. Importers would be assured of equal treatment in the assessment of duty on the same class of merchandise from the same country. Inasmuch as the value is found as of the date of exportation, customs officials would have, within a short time from the date of exportation, a record of all transactions which would have any bearing upon the value of goods shipped to the United States. The delays incident to the determination of foreign value would not exist; both the Government and importers would know at an earlier date the obligations of any particular importation—with a saving of time and, thus, expense to both.

United States value should be adopted, as proposed, as the second basis of appraisement, with some modifications in language as indicated in appendix A, attached. The recommended changes are in the interest of clarity and to establish consistency with other provisions of the proposed law; they will further the object of the present measure.

The third basis of appraisement proposed in this present measure, to wit, comparative value, should be the fourth basis of appraisement, and constructed value, which appears in the bill in fourth position, should be made the third basis. A value basis should appear in the order of its simplicity of determination. Comparative value is more difficult of determination than constructed

value. The argument advanced for placing constructed value in fourth position is that its determination requires investigation abroad, as in the case of foreign value. Hence, it is stated, those who argue this to be a bad feature of foreign value cannot have a valid objection to the establishment of constructed value as the last resort. There are, however, several additional considerations. Constructed value would be utilized only in a few cases; most transactions would meet the definitions of export value or United States value. Comparative value would be indefinite and difficult of application; and, we are unable to see how, in making comparisons under such proposed basis of value, customs officials can escape making an investigation of the costs of the specified differences to make an adequate adjustment. Comparative value is not a value for identical or similar merchandise; it involves articles as to which adjustments must be made for differences in size, material, construction, texture, and other differences. Constructed value, on the other hand, would be confined to identical merchandise and thus the investigation would be limited in its scope. It would be simpler to determine a constructed value than a comparative value.

Comparative value should be used only as a last resort if a value cannot be determined in any other manner. With certain changes in language, as specified in appendix B, constructed value should be the third basis of value. Some changes are also recommended, in appendix C, in the wording of comparative value. Appendix D covers suggested improvement in the language used in the amended definitions in section 402 (h).

We urge that the bases of appraisement be designated in the following order and that changes in language be effected as outlined in the appendices above mentioned:

1. Export value
2. United States value
3. Constructed value
4. Comparative value

SECTION 17. AMENDMENT OF ENTRIES AND DUTIES ON UNDERVALUATION

Section 17 (a) of this bill deletes certain language from section 487 of the Tariff Act of 1930, and thereby eliminates the importer's right to amend his entry. The law presently recognizes that an importer should have the right to make an amendment of his original entry at any time before the appraiser makes his return.

It is a known fact that the Treasury Department considers the amendment of entries a burdensome procedure which clogs the machinery of appraisement. The proposed measure would, in effect, permit the amendment of an entry but it would be done by the customs examiner through his return of a value other than that at which the importer entered his goods. Such an amendment would be without penalty to the importer unless the examiner reported that the importer had not furnished him with all information in his possession bearing upon the value of the goods. We are not out of sympathy with this method, and believe that most importations could be satisfactorily handled in this manner. Where there is no difference of opinion as to a change in value, the appraiser should make the change without the necessity of a formal amendment. On the other hand, although this might become the practical and convenient method, and the usual procedure in most instances, the importer should not be denied his right of amendment on those occasions when he wishes to amend the value in as formal a manner as he made the declaration of value originally. If he never uses such right, nevertheless he should possess it. There is no substance to the fear that the retention of this right means continued frequent amendments of entries by importers. The importer is interested, as well as the Government, in economy of operation. We urge that the importer's right of amendment be preserved in the law, which can be done without disturbing the proposed procedure of the Treasury Department.

Section 17 (b) proposes to amend section 489 of the Tariff Act of 1930, which now provides for an automatic penalty, if the appraised value exceeds the entered value, amounting to 1 percent for each 1 percent advance in value, based upon the final appraised value. This association has recommended the complete elimination of section 489 of the Tariff Act of 1930. The Treasury Department apparently agrees with the view that the automatic penalty should be removed, but holds that some method of assessment of a penalty should be substituted. We do not believe that a substitution is necessary, rather that it would cause additional work, confusion, and misunderstandings.

The Treasury Department appears to be of the opinion that the complete elimination of penalties would cause some importers to be negligent about furnishing information, or perhaps purposely withhold information, which if disclosed would lead to the appraisement of merchandise at a value higher than the entered value. It is our view that if section 489 were completely eliminated there are still ample provisions in the statute to protect the Government against any importer guilty of culpable negligence or intention to conceal or misrepresent the facts or to deceive the appraiser as to the value of the merchandise (cf. sec. 592, Tariff Act of 1930). But, assuming that it is the desire of Congress to include some provision for the imposition of additional duties, this association submits that the basis upon which such action might be predicated should be more definite than that provided in section 17 (b) of this bill.

The proposed amendment of section 489 of the Tariff Act of 1930 by section 17 (b) of the present bill would eliminate the automatic penalty, but substitute a provision that a penalty may be imposed "* * * if the consignee shall have failed to furnish the appraiser, before that officer has signed his report of value to the collector, all information required by customs officers which is relevant to the value of the merchandise and available to him at the time of entry or within a reasonable time thereafter, and all such information that is so available to the person, if any, in whose behalf the entry was made * * *."

Under the above-quoted language, a serious burden is placed upon importers. At the larger customs ports, particularly New York, there are many customs "officers" in the office of the appraiser who are concerned with the appraisement of imported merchandise. There are numerous other personnel, who might fall within the general designation of customs "officers," outside the office of the appraiser who might require some information as to the value of merchandise. The law does not provide in what manner customs officers shall "require" such information—by word of mouth, by letter, by questionnaire. This is a penalty statute, despite the fact that the extra duties are called additional duties, and there should be a uniformity of requirement so that each customs officer may not set his own standards. One customs officer may differ in his attitude from another, and it is conceivable that a customs officer may differ in his attitude toward different importers. The procedure should be more definitely fixed to insure against carelessness and to guarantee equality of treatment and a sound basis on which an importer may present his case in court, if need be, on the issue of whether or not he had furnished the value information required.

As indicated, the bill provides that the decision of the appraiser shall be subject to protest and administrative and judicial review. The reviewing officials and the courts should not be faced with an indefinite record as to what was "required" and what was furnished. The requirements should be explicit and of such a nature that the importer, the reviewing officials, and the courts will understand precisely what is in issue.

We direct attention at this point to the fact that the present law limits the undervaluation penalty to 75 percent of the final appraised value. The proposed measure carries no such limitation. In other words, a confiscatory penalty of 400 or 500 percent will be possible, and no provision is made for any adjustment of the penalty. The importer may be fully relieved by subsequent departmental or court action, but it is either full relief or full penalty. Under such circumstances, the present limitation of 75 percent should be retained.

Section 17 (c) of this bill, amending section 501 of the Tariff Act, would permit a consignee, his agent, or his attorney to request a notice of appraisement in writing, provided a "substantial" reason for requesting such notice is set forth. The inclusion of the word "substantial" suggests the need for a decision on the part of someone as to whether or not the request will be honored. Such an appeal would be made only because of some differences in view between the Government and the importer, and if the collector has the right to determine whether or not the request sets forth a "substantial" reason, then the very purpose of the provision would be defeated. We recommend the elimination of the word "substantial."

Section 17 (d), modifying the procedure relative to the appraisement of merchandise, fails to provide for three necessary changes in the law:

(1) The appraiser should be required to state in his return the basis of value upon which he appraised the merchandise: Export value, United States value, constructed value, or comparative value. The record should be clear as to what the Government considered the applicable basis of appraisement. Such statement of the basis of appraisement would properly inform the collector, the importer, and, in the event of an appeal, the United States Customs Court.

(2) There should be a time limitation on appraisement. There are too many instances of prolonged delays in appraisement of merchandise, leaving the importer uncertain in his obligations, in a number of cases, for years after the merchandise has been imported.

(3) The existing law provides that where an advance in value is made at the time of entry to meet a previous advance made by the appraiser on an earlier importation, and where such previous advance has been made the subject of an appeal to reappraisement to the Customs Court, the importer's act in entering the goods at the advanced value shall be considered to have been taken "under duress." The purpose of this procedure is to give the importer the benefit of any favorable court decision on the issue without his having to risk automatic penalties under section 489. Under present law, duty is taken on the entered or appraised value, whichever is higher—except in cases of entry "under duress." The proposed bill makes the use of a "duress" entry unnecessary by the amendment of section 503 of the Tariff Act by section 17 (d) of this bill, which provides that the appraised value shall be the final value, regardless of the entered value. However, it overlooks the fact that the present procedure requires a deposit with the Government of the differences in duty pending the outcome of the issue in court, whereas the proposed bill affords the Government no such protection. We recommend that this bill provide that where an appeal is pending in court, and entries are made involving the same merchandise and the same issue prior to a final decision in such pending appeal, the collector may require the deposit of additional duties in the amount involved in the issue in litigation, except additional duties for undervaluation (so-called penalty duties).

SECTION 20. CONVERSION OF CURRENCY

The association is of the opinion that world conditions as they affect currency are not sufficiently stabilized to justify any action at the present time toward a change in the existing law. The conversion of currency for the determination of duties is of great importance, exceeded only by the ascertainment of value and the fixation of the rate of duty to be assessed on imported goods. We believe that the currency situation at the moment is too indefinite and uncertain to justify any action before a thorough study is made by the Congress as to the extent of our participation in any international monetary agreement and the effects of such participation on the tariff structure of the United States.

In any case, we are opposed to the use of rates to be determined by an international body as a standard for the determination of duties under our tariff. We hold that the final decision as to any of the elements which form the basis of duty assessment should rest in the United States. If the committee should decide that legislation is required at this time, then we suggest, as an alternative to the proposal in the present measure that the international monetary fund rate be used as a standard, that the Federal Reserve bank rates shall be used but that the Treasury Department may authorize the use of the international monetary fund rates if they do not vary more than 5 percent from the Federal Reserve bank rates. This, on its surface, would seem to bring about the same result, but we submit that the principle of establishing the standard within our own administration of the customs laws would be maintained by virtue of our proposed change.

It is our understanding that the purpose of using the international monetary fund rates is to establish a simpler structure for the conversion of currencies on entry. The present practice of taking the Federal Reserve bank rates is cumbersome because it requires the use of long fractions and, where the rates are not available at the time of importation, the rechecking of the rates with the dates of exportation in order to arrive at the precise exchange to be used for the calculation of duties. The association is sympathetic with this purpose because it would be economical from the standpoint of Government operation and would be helpful to importers by establishing more stability in the determination of duties. However, we believe this objective would be achieved more satisfactorily if the Treasury Department were authorized to use the international monetary fund rates provided they do not vary by more than 5 percent from the Federal Reserve bank rates.

The association reiterates that the purpose of this memorandum is to deal only with certain sections of H. R. 5505. The association does not recognize that these are the only changes which should be made in the Tariff Act. We urge the recommendations made above because we believe they are necessary to accomplish the desired objective of this proposed legislation.

APPENDIX A

UNITED STATES VALUE

(1) On page 19, line 18, strike out the word "profit" and insert in lieu thereof the word "profits". In support of this proposed amendment it should be noted:

(*a*) The definition of "United States value" in section 402 (e) of the Tariff Act of 1930, provides for an allowance for "profits", i. e., not necessarily only one profit, when calculating that kind of value;

(*b*) The definition of "United States value" in section 13 of H. R. 5505 provides for an allowance for "*any* commission" [emphasis ours], i. e., one or more, when calculating that kind of value;

(*c*) By virtue of the definition of the term "purchasers at wholesale" on page 23 of H. R. 5505, the selling price, from which "United States value" as defined in section 13 of that bill is calculated, may be a price to retailers and, hence, will sometimes include two profits, i. e., an importer's profit and a wholesaler's profit.

(2) On page 19, lines 19, 20, and 21, strike out the words "imported merchandise of the same class or kind as the merchandise undergoing appraisement" and insert in lieu thereof the words "such or similar merchandise". In support of this suggested amendment it should be noted:

(*a*) In relation to the imported merchandise whose "United States value" is being calculated, the phrase "imported merchandise of the same class or kind" is much less specific than the phrase "such or similar merchandise". The former phrase merely signifies that both the merchandise which is being appraised and the merchandise which may be considered in connection with the allowance for profit and general expenses must be imported and that they must have common characteristics which distinguish them from other species or varieties of merchandise. It does not signify that the merchandise which may be so considered must resemble the merchandise which is being appraised in respect of size, weight, quality, etc., or even in respect of value. For example, any automobile imported from any foreign country is merchandise of the same class or kind as a Rolls Royce imported from England. On the other hand, the phrase "such or similar merchandise", as defined on pages 23 and 24 of H. R. 5505, signifies merchandise which is "produced in the same country as the merchandise undergoing appraisement" and which is, at least, "of like materials" and "used for the same purpose" and "of approximately equal commercial value";

(*b*) The selling price, from which the "United States value" of imported merchandise is calculated under the terms of section 13 of H. R. 5505, must be a price of "such or similar merchandise". Hence, it is unnecessary and unreasonable to consider merchandise which is neither like nor similar to the merchandise undergoing appraisement but which is merely of the same class or kind, when determining the allowance for profit and general expenses involved in such an appraisement;

(*c*) The phrase "imported merchandise of the same class or kind" is too vague and indefinite a delineation of merchandise when may be so considered in such an appraisement and will undoubtedly be the subject of various interpretations and will result in much needless litigation.

APPENDIX B

CONSTRUCTED VALUE

On page 21, lines 7 through 13, strike out the words:

> "(2) an addition for general expenses and profit equal to that which producers in the country of production whose products are exported to the United States usually add in sales, in the usual wholesale quantities and in the ordinary course of trade, of merchandise of the same general class or kind as the merchandise undergoing appraisement;"

and insert, in lieu thereof, the words:

> "(2) an addition for general expenses and profit equal, in percentage to that which is usually added in sales in the country of production, in the usual wholesale quantities and in the ordinary course of trade, of such or similar merchandise, or, if there are no such sales of such or similar merchandise, of merchandise of the same class or kind which most resembles the merchandise undergoing appraisement;"

APPENDIX C

COMPARATIVE VALUE

(1) On page 20, line 15, we recommend that between the words "equivalent" and "of" be inserted "at the time of exportation to the United States."

(2) On page 20, line 18, from the word "which" to the end of the subsection, line 22, there be inserted in place of the present language the following: "which is comparable with and most resembles the merchandise undergoing appraisement in construction and use, with appropriate adjustments in value for differences in size, weight, material, construction, quality, texture, use, and other differences."

The intent of this suggestion is to bring the articles to be compared within as close relationship to each other as possible.

APPENDIX D

DEFINITIONS

(1) On page 22, line 18, strike out the word "all."

(2) On page 22, line 20, before the word "purchaser", insert the words "seller or".

(3) On page 22, line 21, after the word "law," insert "or (B) reasonably limit the number or classes of purchasers".

(4) On page 22, lines 21 and 23, strike out "(B)" and "(C)" and insert, in lieu thereof, "(C)" and "(D)", respectively.

(5) On page 24, line 6, after the word "appraisement", strike out the comma and insert, in lieu thereof, the word "and".

(6) On page 24, line 7, after the word "person", insert the words "and is" and, after the word "materials", insert the words "and construction".

The association makes the reservation that other changes in language in this section may be advisable, but those recommended are considered of greater significance.

Senator KERR. Mr. Tyre? Have a seat, Mr. Tyre.

STATEMENT OF A. C. TYRE, IMPORTERS ASSOCIATION, INC.

Mr. TYRE. My name is A. C. Tyre, and I represent the Importers Association, Inc., of Chicago.

The importers association is an organization composed of approximately 275 firms and individuals engaged in the importing industry.

The Customs Simplification Act has been the subject of frequent discussions at meetings and committee meetings of this association for the past 3 years, and the association is hopeful that the bill, having reached the present stage, will be passed on favorably in the near future.

The organization is generally in favor of the bill as it has now been submitted, but there are certain defects in the bill which we feel should be corrected in the interests of customs simplification, and in the interests of importers, as well.

One of the principal objections which the importers association has raised is that of the elimination of the provision for amendment of entries.

The previous witnesses have covered the matter quite fully, and I do not think that I can add anything except that Mr. Bennett, in giving an explanation, might have amplified it a little bit.

For instance, if an importer files an entry on a declared value of $1,000, pays a regular duty of 25 percent, his duty would be $250.

If, after receiving information that the correct value should have been $1,100, by the privilege of amending the entry he would pay the additional duty of 25 percent on $100, or a total of $275.

On the other hand, if the customs appraising officer should decide that the importer was culpably negligent or fraudulent in withholding the information relative to that increase of $100 in value, the duties would be assessed on the total value of $1,100 at 35 percent, or a total of $350 as against $275.

Senator KERR. Would that be $350 or $385?

Mr. TYRE. $385; I stand corrected.

Senator KERR. Well, I thought that is what it would be if I understood what you were talking about.

Mr. TYRE. That is correct.

The importer's only recourse in such a case would be to resort to a petition to the United States Customs Court, which we think is costly not only to the Government but to the importer, and for amounts involving differences such as I have illustrated, the amount is too small to resort to legal procedure, and, as a result, the importer simply pays the amount and forgets about it.

We think that the law can be amended as it stands at the present time with very little change.

Senator KERR. You mean the law, or the bill?

Mr. TYRE. The bill. It can be amended in that section by giving the importer the privilege to amend.

One thing that should be brought to the attention of your committee is that the present tariff law provides that there is a presumption of correctness on the part of an act of a customs officer, and the Government therefore is fully protected, and has a rather powerful weapon, and the appraisers or the examiners do not need this additional protection as set up in section 489.

One other observation I would like to make is that under temporary free importations where, section 308 of the Tariff Act, salesmen arrive in the United States with samples, frequently the samples are not marked to comply with the requirements of the tariff law.

I would like to have inserted for the consideration of the committee a provision eliminating the requirements for the marking of merchandise which is entered as samples for temporary entry. The law has penalties for evasion of the marking provisions of the law, which I think are ample to protect the Government if the salesman should attempt to dispose of the merchandise without proper marking.

The law also has a provision for change in determining currency values, which is a considerable variation from the past practice, and provides for the publication of the rates as determined by the Federal Reserve, but subject to the decision of the Treasury Department as to whether or not they will be published.

The withholding of publication of the Federal Reserve exchange rates has caused some consternation on the part of importers in the past, and if the Treasury Department is given the right to determine the exchange rates, we believe that some provision should be included making the publication of the rates mandatory and at a reasonable time after the rates are made available to them by the Federal Reserve bank.

I do not want to appear facetious, but I have seen posters on the bulletin boards of various Treasury Department offices which pro-

claim in bold type, "Procrastination is the thief of time," and the statement of Mr. Bennett, the former witness, asking that a time limit be placed in the bill, limiting appraisements to 120 days is reasonable and should be included in the bill.

The failure of customs officers to promptly appraise merchandise is a constant source of irritation to importers. It is expensive to the Government by reason of the fact that it allows files to accumulate year after year without action, and it is merely human nature when an individual is confronted with a difficult problem to set it aside if he does not have a time limitation placed on him to perform an act, and I believe that the importers are entitled to that consideration.

I would like to file a written statement if the chairman agrees, to be filed within the next day or two.

Senator KERR. It may be filed, Mr. Tyre. Thank you, sir.

Mr. TYRE. Thank you.

(The statement referred to is as follows:)

STATEMENT OF A. C. TYRE ON BEHALF OF IMPORTERS ASSOCIATION, INC., CHICAGO, ILL., RE CUSTOMS SIMPLIFICATION BILL (H. R. 5505)

Section 5. American goods returned: These amendments to the tariff act should be adopted. At the present time an importer is required frequently to resort to lengthy correspondence and digging up of old records to establish the fact that the merchandise has been exported from the United States, when the examination by customs officers can, in most cases, establish such fact without the production of documentary proof.

Section 13. Value: The Importers Association, Inc., is in agreement with the removal of "foreign value" as a basis for assessment of ad valorem duties. Under section 402 (b) Export value the bill reads "freely offered for sale in the principal markets." Under section 402 (c) the bill reads "freely offered for sale in the principal market." It would seem that there would more likely be more than one principal market in the United States than abroad, and the wording of that section should be reviewed. Under section 402 (g) Definitions, paragraph (1) in one place refers to "all purchasers at wholesale" and in another to "usual purchasers at wholesale." The wording should be uniform since it would seem that the two terms would embrace a different class of purchasers and would cause confusion in the administration of the law. Paragraph (3) of the same section defines "purchasers at wholesale," therefore it would seem that the words "all" and "usual" could be eliminated from paragraph (1).

Section 313 (c). Draw-back—"Merchandise not conforming to samples or specification": The 30-day limitation in the present law is often difficult for an importer to comply with, and the provisions of the bill extending the time to 90 days should be adopted.

In report No. 1089, Eighty-second Congress, first session, the House of Representatives says on page 3, "Importers will no longer be uncertain what value will be assigned to their imports, and appraisements will be completed more promptly." It is sincerely hoped by the Importers Association, Inc., that the wording of the various provisions be carefully studied to eliminate as much as possible any uncertainty with respect to their meaning, and thereby enable both the Government and importers to receive the benefits of the many months of work in the passage of this legislation.

Senator KERR. Mr. Tipton.

STATEMENT OF STUART G. TIPTON, GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. TIPTON. My name is Stuart G. Tipton. I am general counsel of the Air Transport Association of America.

I represent the Air Transport Association of America which has as its members practically all of the certificated airlines of the United States, and all of the international airlines.

We welcome the opportunity of discussing this bill before the committee. It is an important bill for us. At the time the last administrative customs bill was passed through the Congress, airlines did not amount to much, and consequently there was no reason to give their particular problems any attention.

Since that time they have increased in their contribution to international trade and travel a great deal. As far as cargo is concerned it has gone up from 8,000 pounds of cargo in 1931 to 80,000,000 pounds of cargo in 1950.

Senator KERR. What percentage of increase is that?

Mr. TIPTON. It is 10,000 times. I cannot convert that into percentages, but it is 10,000 times.

Senator KERR. I cannot either, and I thought maybe you could.

Mr. TIPTON. Passengers have increased from about 9,000 in 1931 to 580,000 in 1950; consequently, the airlines have a deep interest in simplifying the customs procedures because all we have to sell is speed. We charge approximately 10 times for moving cargo what surface carriers charge. In order to get people to pay that and to take advantage of that speed, we have to give them the speed, and customs procedures may well make the difference between selling a particular block of business and giving a shipper that service and not selling it at all.

We have three suggestions to make with respect to the legislation that is now before the committee. One deals with the consular invoices. As the committee knows, the consular invoice is a document describing the goods which is made out by the shipper abroad and certified by a United States consul. Section 16 of the bill would relieve the shippers of preparing such a document if the shipment is valued at less than $250. At the present time, the exemption applies to goods valued at less than $100. We certainly concur with the Treasury Department that something should be done to relieve shippers of the onerous requirements of securing consular invoices, but we think the document should be eliminated. That invoice is extremely complicated to prepare. It delays shipments substantially, is expensive, and is unnecessary.

To demonstrate how complicated it is, let me point out that although the form itself consists of two sides of one sheet, nevertheless the instructions for preparing the form require six pages and these six pages must be understood by foreign shippers. The delay involved includes not only the filling out of the form but the shipper must visit the United States consulate, although his office may be in another part of the country, to leave the invoice and oftentimes must make a second visit to pick up the verified invoice. Both visits involve delays and increase the expense of foreign trade. It may be said that these visits are unnecessary and mail could be relied upon, but it is well known that personal appearance is more likely to secure the service desired. It will be apparent since shipments from parts of South America and Europe can be flown to the United States overnight that it may often take longer to secure a consular invoice than it will to fly the goods to this country. The form serves no useful purpose in that information needed can be secured from the commercial invoice prepared by the seller and from the airway bill which accompanies the goods.

It is significant that management exports, who made a survey of the Bureau of Customs at the Bureau's invitation, studied the use of the consular invoice and recommended that it be abolished to relieve the burden on the consular and customs services.

We strongly recommend that the form be abolished. However, if that is not possible the form should be required only for shipments valued at $500 or more.

The next comment we have on the bill deals with informal entries.

Senator KERR. With what?

Mr. TIPTON. Informal entries.

This same section of the bill, namely, section 16, also recognizes the desirability of broadening the use of informal entries. Thus this section would provide that informal entries which now may be utilized on shipments valued up to $100 be applicable to shipments valued up to $250. Under the informal entry procedure the employees of the customs service themselves prepare all the documents necessary and these are then signed by the owner or the agent making the entry. The Government is adequately protected in that its own employees prepare the forms and collect any duty which is assessable. The informal entry was devised to enter shipments on which very little duty is collectible. Thus, the 535,221 informal entries in 1950 produced only an average of $3.68 revenue. If these shipments had been processed by formal entry, which cost the Customs Bureau an average of $18.98 (in 1947) the transactions would have represented a substantial loss above what was collected as revenue from the entry. We heartily concur with the Treasury Department that the informal entry procedure should be used more extensively and we have three suggestions as to how its use should be broadened.

First, we believe that goods valued up to $500 or less should be subject to informal entries. This larger figure would be an appropriate recognition of the change in purchasing power of the dollar and make the amount of goods which could be admitted by informal entry consistent with the amount which can be brought back by a returning resident. Secondly, the bill should provide that goods on the free list which are not subject to customs duty should also be admissible under the informal entry procedure. Since no duties are collectible on goods entering under the free list, there is no justification for imposing on such goods the complicated delay and expensive procedure of the usual formal entry.

The third recommendation is that the bill should make clear that air carriers, that is, the transport companies themselves, can make informal entries on behalf of their consignees. The great speed with which air carriers can bring goods to the United States combined with the speed with which the goods can move from ports of entry to inland cities make it essential that air carriers be authorized to make informal entries. Thus, a lady's blouse can come from Paris to New York overnight, be in Detroit before the close of business on the day it arrived in New York, and be on the shelf of a Detroit store about 36 hours after it left Paris. To do that, however, it would be necessary to clear the goods through customs in New York at any hour of the day or night. The customs inspectors are available in New York around the clock and the airlines operate around the clock, but because

the airlines are not permitted to make informal entries, this optimum speed of air transportation cannot be realized.

The shipments that arrive late in the day, during the night, or on holidays have to wait until the following business day or longer to secure entry. The alternative to waiting 24 to 98 hours in New York is to put the goods in bond at New York for carriage to Detroit. To do this the carrier must prepare nine copies in the in-bond form. On arrival there, the carrier is quite likely to find that the Detroit port of entry can accept no bonded goods because of lack of space and the carrier must either provide its own space or carry them on to another port such as Chicago. If the carrier takes them on to Chicago he is quite likely to discover that 2 weeks' time is required to make an entry there because of the backlog of work. In any event, the Detroit consignee must appoint a broker in Chicago in order to enter the shipment. After all this delay, the consignee must still get the goods shipped back to Detroit. This is hardly the expeditious service which the airline is capable of and anxious to provide. A similar awkward inconvenience exists when the consignee lives at a point which is not a port of entry. Thus a shipment from Paris to Waukegan, Ill., which is not a port of entry, could be cleared at New York informally by the carrier and be shipped directly to the consignee just as though it were a domestic shipment. But if it is placed in bond in New York, it must be sent to a port of entry and the Waukegan consignee must appoint a broker in a distant port to clear the shipment and then have it moved forward at a later date. If 2 weeks are required to get a package from Europe, a boat will serve as well, as all the speed is taken out of air transport.

Senator KERR. If it came in by boat would it not have the same hurdles to clear on arrival as it now does if it comes in by air?

Mr. TIPTON. Yes; that is correct.

Senator KERR. Is not all of the delay that you have referred to here delay which occurs after it reaches this country?

Mr. TIPTON. Yes; in dealing with the informal entries, that is the case.

Senator KERR. Is there any difference in the way they deal with informal entries as between goods which arrive by boat and goods which arrive by air?

Mr. TIPTON. I think not.

Senator KERR. Then what you said would hardly be accurate, it seems to me.

Mr. TIPTON. Well, my point there is this: That you pay a high price in order——

Senator KERR. I understood you to say that if this was not done that there would be no advantage in shipping by air because it takes just as long as it does by boat. Is that what you say?

Mr. TIPTON. That is what I said.

Senator KERR. You did not mean that, did you?

Mr. TIPTON. Well, if we take 2 weeks to get the shipment over here, it would not be worth paying the high price for air transport, because the only way we can sell——

Senator KERR. I am not deprecating the desirability of the objective you have outlined. Either I have not understood you or your statement was not quite accurate, because all of the delay that you have referred to, and which you want to eliminate, and with which

I am entirely sympathetic, as I understand your testimony, occurs after the arrival in this country of the imported article.

Mr. TIPTON. That is the case.

Senator KERR. And it would not prevent the saving of time in transporting it from the foreign country to this country by air.

Mr. TIPTON. No; you are quite right, and if I have said anything which indicates the contrary, I am wrong. The transportation time would remain the same, the long time for the surface vessel and the short time for the air.

Senator KERR. If there is delay that can be eliminated, certainly that is a wholesome objective. I just wanted to be sure I understood what you said or what I thought you said.

Mr. TIPTON. May I go forward 1 minute on that though, to explain how the airline and the surface are still not on a par even though the delays are the same? We sell air freight to a consignee in the United States. He has to have a good reason for it. Usually his reason is that he can get imported merchandise in and reduce his inventories. For example, he doesn't need to buy such large shipments at a time, and if he can receive his merchandise by air he can display samples and sell them without stocking a great deal of the merchandise.

Without regard to what surface carriers do, or the delays to surface carriers, if we require 2 weeks to get merchandise from Paris through customs to this man, then we have a hard time providing him with a feasible service. Without the present customs delay we could provide 36-to-48-hour delivery from Paris so he could sell to his customer one day and order it from Paris for delivery the following day or the day after that. But if it takes air carriers 2 weeks to get the goods over from Paris, then he cannot rely on the airlines to supply his customers and it is hardly worth his while to pay our high rates. Now, that is the point I have been anxious to make.

The third point I wish to make with respect to the bill deals with preclearance by customs inspectors of aircraft coming to the United States and this is a problem which I think is particularly important with respect to aircraft.

Customs procedures applicable to aircraft could be simplified with economy to the United States Government by the preclearance of air craft at cities outside of the United States before they arrived at points in the United Sates. Thus aircraft coming to the United States from Montreal, Canada, could be inspected at that point regardless of where the aircraft finally landed in the United States. There are several important advantages to the United States Government from this procedure. The United States could save expense in terms of the number of inspectors necessary to handle incoming aircraft. For example, aircraft operating from Montreal, Canada, to Syracuse, Albany, Rochester, New York City, Boston, and Tampa, use inspectors at all of those points, whereas if the aircraft were inspected at Montreal before departure, inspections could be eliminated at destination.

The Immigration Service has recognized the great advantages of preclearance and is today inspecting the passengers on aircraft at Toronto before the planes enter the United States. The Immigration Service is also anxious to start such preclearance at Montreal, Canada. The Customs Bureau has recently inaugurated preinspection at Toronto but under a condition which denies much of the bene-

fit of preinspection. Even though customs is willing to examine passengers and their baggage and accept payment of duties before the aircraft takes off from Toronto, it nevertheless requires the operators to file forms when the aircraft arrives in the United States. This requires the maintenance of employees at destination for the sole purpose of receiving those documents. This, of course, increases the expenses and reduces the desirability of preclearance. We strongly recommend that this committee adopt an amendment to this bill authorizing the customs service to avail itself of preinspection procedures to the fullest extent possible and to permit the greatest savings in its own and the air carriers' operations.

That concludes my statement, Mr. Chairman.

Senator HOEY (presiding). Thank you. Are there any other questions?

Thank you very much.

Mr. TIPTON. Thank you, sir.

(The statements of Mr. Tipton are as follows:)

STATEMENT OF STUART G. TIPTON, GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION, OF AMERICA, ON H. R. 5505

My name is Stuart G. Tipton. I am general counsel of the Air Transport Association of America, which includes as its members practically all of the certificated airlines of the United States. We welcome the opportunity to discuss H. R. 5505 with the committee.

The airlines' interest in customs procedures can best be demonstrated by reciting the growth of international air transportation which requires customs clearance since the enactment of the Tariff Act of 1930. The year after that act was passed was the first year of international air cargo operations and one airline reported the carriage of 8,000 pounds of cargo between the United States and foreign points. That has increased ten-thousand-fold to 80 million pounds in 1950, and was carried by 12 United States flag airlines. While this represents only 40,000 tons, and therefore, a small portion of the total cargo coming to the United States from international points, its significance exceeds the mere relationship in numbers, because air cargo to a great extent represents samples of other cargo which will move by surface transport. It is of urgent importance that these samples move expeditiously to facilitate trade.

Passengers arriving in the United States on airlines, who with their baggage must be examined by customs, increased from 9,052, in fiscal 1931, to 580,609, in fiscal 1950. Passengers arriving by air now almost equal the arrivals in 1931 by air and sea. The nearly 600,000 passengers arriving by air in 1950 almost equal the 653,000 that arrived by sea and air in 1931. Illustrative of the impact of the air transport on the customs service is the fact that in 1930 there were no customs inspectors assigned exclusively to handle international air transportation, and today, in New York City alone, there are 91 inspectors solely for air commerce.

My testimony will be divided into two general parts. First, there are several sections in H. R. 5505, which we endorse and which should be enacted in their present form as speedily as possible. Secondly, there are sections which apparently are designed to solve serious problems, but those provisions are inadequate and should be revised.

The three sections of the present bill which have particular application to airline operations, and which we endorse for prompt enactment, are sections 12, 14, and 9, which I would like to discuss in that order.

Section 12 would amend the Tariff Act of 1930 to authorize the Secretary of the Treasury to grant exemption from the application of the customs laws for vehicles and equipment used in connection with aircraft accidents, for such purposes as, search, rescue, investigation, repair and salvage. It will be readily apparent that in the event of an aircraft accident customs red tape should not impede search and rescue efforts. The greatest expedition is necessary not only to save lives, but to attempt to salvage cargo and very expensive modern airplanes. The enactment of this provision will not result in a great inflow of foreign goods into this country, because in this country we have

an abundance of the supplies necessary to search for aircraft and rescue its occupants, but the enactment of this provision will have important consequences in the efforts of this government to secure similar privileges in foreign countries to permit us to search for aircraft in the event of accidents. United States flag airlines operate into at least 87 different jurisdictions, and in each of those we need arrangements to secure permission to search promptly for aircraft and rescue passengers and salvage cargo and aircraft in the event of an accident.

Section 14 of the bill would amend the Tariff Act of 1930 to authorize the Secretary of the Treasury to permit by regulation the signing and delivery of manifests and aircraft entry documents, by not only the pilot, as is now required, but by other authorized agents of the operator of the aircraft. This section would also amend the Tariff Act of 1930 to permit the Government to impose a fine or penalty for irregularities or omissions in the manifests on the operator, whereas now such penalties may be imposed only on the pilot or person in charge of the aircraft. One of the differences between steamship and aircraft operations calls for this amendment. In an early day, the master of the vessel was the only responsible agent of the steamship company who was certain to fall within the jurisdiction of the customs authorities. Therefore, it was desirable to require his signature and it was felt necessary to subject him to any penalties for infractions. In airline operations, however, where the airline must secure Government approval before it can land in a foreign country, the operating company, as well as the pilot, is subjected to the jurisdiction of the foreign government. Furthermore, since the pilot's control over and responsibility for the aircraft when it is on the ground is far less than the responsibility of the steamship captain for a vessel when it is in a foreign port, it is desirable to hold the operating company responsible. The new procedure will actually aid the enforcement of the customs laws from the Government's point of view. At the present time notices of error in customs reports are sometimes sent to the pilot which, because the pilot is shifted from one route to another, do not reach the airline company for several weeks. Under the proposed legislation, the Secretary could hold the airline operator directly responsible and would not be limited to enforcing his regulations only on the pilot.

Both sections 12 and 14 should be enacted promptly to fulfill commitments by this Government made to the other countries which are members of the International Civil Aviation Organization. In the Chicago Convention, signed in 1945, our Government pledged itself in article 22 "* * * to adopt practicable measures, through the issuance of special regulations or otherwise to facilitate and expedite navigation by aircraft between the territories of contracting states, and to prevent unnecessary delays to aircraft, crews, passengers, and cargo, especially in the administration of the laws relating to * * * customs and clearance." And in article 23 our Government undertook "* * * to establish customs * * * procedures affecting international air navigation in accordance with the practices which may be established or recommended from time time, pursuant to this convention * * *."

Pursuant to this commitment, the various governments, and there are now 58 members of the International Civil Aviation Organization, met and agreed to certain customs procedures which are contained in annex 9 of the convention. That annex calls for the provisions which are contained in this bill in sections 12 and 14. The executive branch of the Government committed itself to adopt these provisions, subject only to legislative authorization. The early enactment of this bill will not only meet our Government's commitments but will aid our efforts to get similar provisions in other countries.

The third section of the bill which deals directly with aircraft operations is section 9, which would authorize the Secretary of the Treasury, by regulation, to admit to the United States, without payment of customs duties, ground equipment for aircraft. Specialized ground equipment is necessary to handle and service the aircraft when it lands at various airports. These are usually specially designed to be used with a given aircraft, and it is essential that the equipment used be standard and uniform, whether the aircraft operates in Germany, Great Britain, or India.

Since most of this type of equipment is manufactured in the United States, it is unlikely that very much ground equipment will be imported into the United States, but it is highly important that this Government enact this legislation to aid our Government in securing reciprocal rights in the more than 87 jurisdictions to which our airlines operate.

In the next part of my testimony, I will discuss three customs problems which although recognized as troublesome by the Treasury, are not adequately dealt with in this bill. The three are, the consular invoice, the use of informal entries, and the use of preclearance procedures. We concur in the Department's view that some amendment of the Tariff Act with respect to two of these problems is necessary but we believe the provisions in this bill should be amended.

As the committee knows, the consular invoice is a document describing the goods which is made out by the shipper abroad and certified by a United States consul. Section 16 of the bill would relieve the shippers of preparing such a document if the shipment is valued at less than $250. At the present time, the exemption applies to goods valued at less than $100. We certainly concur with the Treasury Department that something should be done to relieve shippers of the onerous requirements of securing consular invoices, but we think the document should be eliminated. That invoice is extremely complicated to prepare. It delays shipments substantially, is expensive, and is unnecessary. To demonstrate how complicated it is, let me point out that although the form itself consists of two sides of one sheet, nevertheless, the instructions for preparing the form require six pages and these six pages must be understood by foreign shippers. The delay involved includes not only the filling out the form but the shipper must visit the United States consulate, although his office may be in another part of the country, to leave the invoice and oftentimes must make a second visit to pick up the verified invoice. Both visits involve delays and increase the expense of foreign trade. It may be said that these visits are unnecessary and mail could be relied upon, but it is well known that personal appearance is more likely to secure the service desired. It will be apparent since shipments from parts of South America and Europe can be flown to the United States overnight that it may often take longer to secure a consular invoice than it will to fly the goods to this country. The form serves no useful purpose in that information needed can be secured from the commercial invoice prepared by the seller and from the airway bill which accompanies the goods.

It is significant that management experts, who made a survey of the Bureau of Customs at the Bureau's invitation, studied the use of the consular invoice and recommended that it be abolished for the following reasons:

The Customs Bureau is burdened by its attempts to keep consular officers constantly advised of proper procedures and inadequacies of the invoices received. The study denies that this work is of any value because the heavy workload on consulates forces them to make the certification strictly routine and provides little assistance either to the exporters or the Customs Service. The protection which is looked for against fraud is often negligible because the consular invoice may actually be prepared by brokers in this country and delivered to foreign offices for certification. In addition, many appraisements are completed before the consular invoice is produced. When the invoices do not arrive, extra bonds and forfeitures must be posted by the importer and burdens on an already overworked staff are increased.

We strongly recommend that the form be abolished. However, if that is not possible the form should be required only for shipment valued at $500 or more. The form is not required today when the value of goods is less than $100, but that figure was adopted so long ago that we believe to admit an equivalent amount of goods today without a consular invoice would require the value to be set nearer $500. This is supported by the recent increase to $500 as the value of the goods which may be brought to the United States duty-free by returning residents. Until just recently that figure was $100, but Congress, recognizing the difference in the purchasing power of the dollar, raised it to $500. To increase the value of goods which do not require a consular invoice to $500 would make these two actions consistent.

This same section of the bill, namely, section 16, also recognizes the desirability of broadening the use of informal entries. Thus this section would provide that informal entries which now may be utilized on shipments valued up to $100 be applicable to shipments valued up to $250. Under the informal-entry procedure the employees of the Customs Service themselves prepare all the documents necessary and these are then signed by the owner or the agent making the entry. The Government is adequately protected in that its own employees prepare the forms and collect any duty which is assessable. The informal entry was devised to enter shipments on which very little duty is collectible. Thus, the 535,221 informal entries in 1950 produced only an average of $3.68 of revenue. If these shipments had been processed by formal entry, which cost the Customs Bureau an average of $18.98 (in 1947), the transactions would have represented a substantial loss above what was collected as revenue from the

entry. We heartily concur with the Treasury Department that the informal-entry procedure should be used more extensively, and we have three suggestions as to how its use should be broadened.

First, we believe that goods valued up to $500 or less should be subject to informal entries. This larger figure would be an appropriate recognition of the change in purchasing power of the dollar and make the amount of goods which could be admitted by informal-entry consistent with the amount which can be brought back by a returning resident. Secondly, the bill should provide that goods on the free list which are not subject to customs duty should also be admissible under the informal-entry procedure. Since no duties are collectible on goods entering under the free list, there is no justification for imposing on such goods the complicated delay and expensive procedure of the usual formal entry.

The third recommendation is that the bill should make clear that air carriers can make informal entries on behalf of their consignees. The great speed with which air carriers can bring goods to the United States combined with the speed with which the goods can move from ports of entry to inland cities make it essential that air carriers be authorized to make informal entries. Thus, a lady's blouse can come from Paris to New Lork overnight, be in Detroit before the close of business on the day it arrived in New York, and be on the shelf of a Detroit store about 36 hours after it left Paris. To do that, however, it would be necessary to clear the goods through customs in New York at any hour of the day or night. The customs inspectors are available in New York around the clock and the airlines operate around the clock, but because the airlines are not permitted to make informal entries, this optimum speed of air transportation cannot be realized. The shipments that arrive late in the day, during the night, or on holidays, have to wait until the following business day or longer to secure entry. The alternative to waiting 24 to 96 hours in New York is to put the goods in bond at New York for carriage to Detroit. To do this the carrier must prepare nine copies of the in-bond form. On arrival there, the carrier is quite likely to find that the Detroit port of entry can accept no bonded goods because of lack of space and the carrier must either provide its own space or carry them on to another port such as Chicago. If the carrier takes them on to Chicago he is quite likely to discover that 2 weeks' time is required to make an entry there because of the backlog of work. In any event, the Detroit consignee must appoint a broker in Chicago in order to enter the shipment. After all this delay, the consignee must still get the goods shipped back to Detroit. This is hardly the expeditious service which the airline is capable of and anxious to provide. A similar awkward inconvenience exists when the consignee lives at a point which is not a port of entry. Thus a shipment from Paris to Waukegan, Ill., which is not a port of entry, could be cleared at New York informally by the carrier and be shipped directly to the consignee just as though it were a domestic shipment. But if it is placed in bond in New York, it must be sent to a port of entry and the Waukegan consignee must appoint a broker in a distant port to clear the shipment and then have it moved forward at a later date. If 2 weeks are required to get a package from Europe, a boat will serve as well, as all the speed is taken out of air transport.

There is no danger to the United States customs revenues from permitting air carriers to use this procedure. First, the forms are prepared by United States customs employees; secondly, the certificated air carriers are all bonded to protect the United States Government against the loss of any revenue. In fact, certain of the officers in the Customs Service suggested that informal entries be used to expedite the handing of air-cargo shipments.

We have tried for more than 3 years to secure a clarification of our right to enter goods in this manner, but we have not yet had a decision by the Treasury Department. We have had no answer to a letter which 3 years ago requested permission to make informal entries. Two years ago the Customs Service held a hearing on this problem in Baltimore, Md., but we have not been able to learn the result of that hearing. We strongly recommend that this committee make it perfectly clear by statutory language that airlines may enter goods informally within the values prescribed by the statute. A suggested amendment is attached to this statement as appendix A.

Customs procedures applicable to aircraft could be simplified with economy to the United States Government by the preclearance of aircraft at cities outside of the United States before they arrived at points in the United States. Thus aircraft coming to the United States from Montreal, Canada, could be inspected at that point regardless of where the aircraft finally landed in the United States.

There are several important advantages to the United States Government from this procedure. The United States could save expense in terms of the number of inspectors necessary to handle incoming aircraft. For example, aircraft operating from Montreal, Canada, to Syracuse, Albany, Rochester, New York City, Boston, and Tampa, use inspectors at all of those points, whereas if the aircraft were inspected at Montreal before departure, inspections could be eliminated at destination.

The Immigration Service has recognized the great advantages of preclearance and is today inspecting the passengers on aircraft at Toronto before the planes enter the United States. The Immigration Service is also anxious to start such preclearance at Montreal, Canada. The Customs Bureau has recently inaugurated preinspection at Toronto but under a condition which denies much of the benefit of preinspection. Even though Customs is willing to examine passengers and their baggage and accept payment of duties before the aircraft takes off from Toronto, it nevertheless requires the operators to file forms when the aircraft arrives in the United States. This requires the maintenance of employees at destination for the sole purpose of receiving those documents. This, of course, increases the expenses and reduces the desirability of preclearance. We strongly recommend that this committee adopt an amendment to this bill authorizing the Customs Service to avail itself of preinspection procedures to the fullest extent possible and to permit the greatest savings in its own and the air carriers' operations. The suggested amendment is attached as appendix B.

We appreciate the opportunity to appear before your committee to discuss this important legislation. We have several other comments to make on the bill but they are of such detailed character that our purpose can be accomplished by merely inserting them in the record at this point if the committee approves. These supplementary comments are attached to the statement filed with the committee.

APPENDIX A

AMENDMENT TO H. R. 5505

Amend the bill by adding a new section 25 to read as follows:

"SEC. 25. Section 498 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1498) is amended by adding at the end thereof a new subparagraph (c) to read as follows:

" '(c) Notwithstanding any other provision of the Tariff Act of 1930, as amended. The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry by the operator of aircraft of merchandise not exceeding $500 in value imported aboard such atircraft.' "

APPENDIX B

AMENDMENT TO H. R. 5505

Amend the bill to provide for preclearance of aircraft by adding a new section 26 to read as follows:

"SEC. 26. Insert after section 439 of the Tariff Act of 1930, as amended (U. S. C. 1946 edition, title 19, sec. 1439), a new section 439 (a) to read as follows: 'Notwithstanding any other provision of the Tariff Act of 1930, as amended, the Secretary of the Treasury may, by regulation, authorize the customs officers and employees at points outside of the United States to accept the entry of, make appraisals, and classify merchandise destined to the United States, and to search persons and baggage, to board aircraft, to accept deposit of duty, and reports of aircraft destined to the United States to the same extent that such entry, appraisal, classification, deposit, or report would be accepted or could be made at a point of entry in the United States. The Secretary may, by regulation, relieve operators of aircraft, persons, baggage, and other merchandise which have met the requirements imposed by regulation, pursuant to this section, from entry, appraisal, classification, reporting, and any other requirement imposed on arrival at a point of entry in the United States. If any person knowingly and willingly with the intent to defraud the revenue of the United States smuggles or clandestinely introduces into the United States any merchandise contrary to law, or makes out or passes, or attempts to pass, any false, forged, or fraudulent invoice, document, or paper through the points established by the Secretary, pursuant to this section, shall be deemed guilty of violating the Tariff Act of 1930, as amended, to the same extent, and shall be subject to the same penalties as though such action had taken place at a port of entry in the United States.' "

SUPPLEMENTARY STATEMENT FILED BY STUART G. TIPTON, GENERAL COUNSEL OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

In addition to the testimony presented for the committee we wish to submit the following comments on the above bill.

We favor the adoption of section 11 which would authorize the Secretary of the Treasury to disregard certain differences between the estimated duties or taxes deposited and the total amount of duties or taxes accruing when such a difference is no more than $5. Likewise, if the aggregate value of articles brought in by any individuals does not exceed $10 such goods may be admitted free subject to regulations of the Secretary of the Treasury. These amendments of existing Tariff Act are desirable in that they relieve both the Customs and members of the public from red tape which is more expensive than the revenue which it secures.

Section 6 of the bill recognizes that travelers seeking to pass through the United States should not pay duty on goods they are carrying with them and exempts from duty articles not exceeding $200 in value accompanying a person in transit. It is particularly desirable to relieve an air traveler passing through the United States from customs red tape because of the short time such traveler will be here. For example, a traveler moving from Mexico to Europe by air will have only 1 hour in San Antonio to prepare any forms necessary to permit his baggage to go to New York or Boston to connect with an aircraft bound for Europe. At the present time the preparation of in-bond forms at the point of arrival in the United States may take so much time as to cause the passenger to miss his onward flight. This bill in section 6 would amend paragraph 1798 to exempt $200 worth of articles, thus giving some recognition to this problem but we recommend that the value of articles exempted be increased. It is understandable that a traveler from Mexico to Europe, for example, may well wish to take personal property and other articles with him exceeding $200 in value. We recommend that the figure be set at $500. We suggest therefore that paragraph (b) (3) on page 6 read "not exceeding $500 in value of dutiable articles accompanying such a person who is in transit to a place outside United States customs territory and who will take the articles with him to such place." Since such goods may be brought into the United States only on the condition that they be removed with the alien in transit, this exemption would not permit the goods to enter the commerce of this country.

We recommend that in addition to the provisions included in the bill and in addition to those provisions recommended in our testimony, the bill include a provision amending section 484 of the Tariff Act of 1930 to permit entries to be made within 72 hours of the entry of the vehicle which brought the goods. At the present time that section requires that entry be made within 48 hours and failing entry within that period the Customs Service can require that the goods be placed in storage. Placing goods in storage involves expensive bonded transport, storage charges, it increases substantially the handling required by customs officials and adds to the inconvenience of the importer. We urge that this inconvenience be imposed only if the importer has not entered the goods within 72 hours of its arrival.

There remains one practice in the present customs procedure which works hardship on air carriers and shippers by air to which we wish to direct the committee's attention. That is the transportation entry using Customs Form 7512.

The procedure relates to the following transaction. When shipments enter the United States for the sole purpose of transiting the United States to a port of export, the goods proceed under the transportation entry and move under bond to assure their export rather than their entry into the commerce of this country. If a shipment from Mexico City to London, for example, enters at San Antonio, it is placed in bond at San Antonio to be released at Boston or New York for transshipment to London. To employ that procedure it is necessary for the carrier to prepare nine copies of the prescribed form. If while the shipment is en route to New York, it is determined that the shipment must be exported from Boston rather than New York, the carrier must prepare another two copies. We believe that the preparation of these 11 copies is not only wasteful and may delay the shipment many hours by missing an advantageous connecting schedule, but are unnecessary for customs purposes. We believe that the basic customs requirements would demand only four copies and not 11. Thus one copy of the entry could be left at San Antonio and three copies proceed with the goods to the port of export. At the port of export the second copy could be marked by the collector and returned to San Antonio to close the case in San Antonio.

A third copy could be sent to Washington for control purposes and the fourth copy could be retained at the port of export. Nevertheless, at the present time 11 copies of the form are required.

Senator HOEY. The next witness is Mr. Hinckley. Have a seat, Mr. Hinckley.

STATEMENT OF HUGH F. HINCKLEY, ASSOCIATED REPRESENTATIVES OF STAFFORDSHIRE POTTERS

Mr. HINCKLEY. My name is Hugh Hinckley, and I am with Doulton & Co., Inc., but I am here, Mr. Chairman, before you on behalf of the Associated Representatives of Staffordshire Potters.

This group composes 14 importers of fine chinaware and fine earthenware products from the United Kingdom.

You gentlemen may well be familiar with products of our group, such as Wedgwood, Spode, Royal Doulton, Minton, Royal Worcester, and Crown Derby.

On behalf of our association we urge that your committee submit an adverse report to the Senate on H. R. 5505 unless the bill be amended to prevent discrimination which will be against the interests of American importers handling these fine earthenware and chinaware products.

At this point, gentlemen, I wish to state that our objections are limited solely to section 13 of the bill, namely, the value section. The other sections of the bill we are in general sympathy with, and the broad purposes and desires to cut red tape, speed up customs procedure to the advantage of both importer and Government alike; we entirely concur with that.

The proposed Customs Simplification Act by section 13 thereof would eliminate the use of foreign value as the basis for appraising merchandise, and require our customs appraisers to apply (1) export value or, secondly, United States value, thirdly, comparative value, or lastly, constructed value, in determining the prices for ad valorem rates of duty.

We are presently operating, gentlemen, in our industry, very satisfactorily under the foreign-value provision. We have never been informed by any customs officials that applications of foreign value to our products have resulted in delays, additional expense to the Government or inconvenience.

This is a practice which has been in process for some decades. Customs officials understand the nature of our product. They understand the prices at which they are offered for home consumption in the United Kingdom, and on the other hand, we also understand, customs practices and how they work. In general, it has been an amicable association on this foreign-value basis.

It is, therefore, our contention that foreign value should continue to be the basis for determining the dutiable value in this industry.

And now to treat the values which this new bill proposes. The first one is export value. It presently provides "freely offered to all purchasers," and so forth. There have been suggestions made, we understand, from some quarters, that this export-value provision might be amended so that instead of stating "all purchasers," some statement to the effect will be provided for purchasers who are financially independent of the seller. If such a provision is stated or such

an amendment is presented before you, we respectfully submit, gentlemen, that this will not take care of all of the members of our industry, and, therefore, it is our desire to operate under the value basis that we have now successfully been working on for many years and have this rejected altogether.

We are exclusive importers of specific lines of earthenware and chinaware. Our factories and suppliers in the United Kingdom do not, in point of fact, actually freely offer these to all customers in this country. There are certain agents' owned companies, and so forth, who handle the entire supply of these goods, that is, the entire importation. For this reason there is grave doubt as to whether export value as it is presently set up would be applicable.

The second basis is United States value. Here again the traditional practices in this trade are to offer our wares for sale countrywide, but in certain stores throughout the country. It does not necessarily mean in every possible outlet throughout the country. It would not be possible to do so.

Strict interpretation of United States value would, therefore, rule us out under this yardstick.

We then come to the third value basis, namely, comparative value, and we submit that in this yardstick there is a broad discretionary power placed in the hands of customs appraisers which would leave actual results in considerable doubt.

For example, it has been stated under the new proposal that appraising officers would calculate the value of an 8-inch plate from, say, the value of a 10-inch plate, or it might be used by appraising officers to calculate or estimate the value of a chinaware item from an exactly similar earthenware item or some combination. Whether comparative value would be resorted to, of course, we are not sure. Nevertheless, it seems to us that this provision could be very detrimental in that a businessman is uncertain as to just what his costs are actually going to finally be. It will be at the discretion and caprice of the customs appraisers.

Furthermore, it may be subject to the same difficulty of export value and United States value, namely, this "freely offered" provision.

It is therefore feared that such a broad provision might constitute an open invitation to appraising officers to arbitrarily fix values on imported products, with the extent of possible court review and corrective action being in some doubt.

We come down next to the final value yardstick which is offered, namely, constructed value or cost of production. This has been stated, and in the recent past, as having difficulties. It involves by section 402 of the Tariff Act of 1930 investigations being made abroad. It, of necessity, brings up cost-accounting systems which are less clearly defined abroad than they are even in this country. With a wide variety of items there could readily be considerable burdensome expense to the Government, delays in gathering factual data, and, consequently, difficulties in carrying on import business in this type of merchandise.

For these reasons, we believe constructed value should only be resorted to in the final analysis, in other words, when no other value is possible.

Actually, we come back to our previous point that under the present statute insofar as our industry is concerned, foreign value is a feasible

method. It works easily, it is quite simple. The price for which these products are offered for sale in the United Kingdom is the same price at which they are billed to us, and upon that price duty is assessed.

Our imports have been going on for quite a number of years. Prices change occasionally, but not from day to day. There is no spot change in the market; it is a stable, fixed item.

Insofar as our industry is concerned, therefore, we submit that the repeal of foreign value would result in leaving the appraisement of our products up in the air without fitting us into any one of the suggested bases of value, other than comparative value. We have already stated our objection to this as hypothetical, as unrealistic in practice, and a yardstick which would be very difficult for a businessman to use.

We therefore urge this committee to amend H. R. 5505 and restore foreign value as a basis for appraising imported merchandise. Unless this bill is so amended for products of our industry or whoever else may be similarly situated, then, although we are in broad agreement with the principles involved and the objectives of the legislation, we believe the bill should be defeated and the existing law left in its present form.

(The prepared statement of Mr. Hinckley is as follows:)

STATEMENT OF HUGH F. HINCKLEY ON BEHALF OF THE ASSOCIATED REPRESENTATIVES OF STAFFORDSHIRE POTTERS ON H. R. 5505

The association consists of importers of fine earthenware and chinaware from the United Kingdom, and is composed of 14 members. This committee will probably recognize the names of several of the products imported by our members, such as Wedgwood, Spode, Royal Doulton, Minton, Royal Worcester, and Crown Derby. We urge the committee to submit an adverse report to the Senate on H. R. 5505 unless the bill be amended to prevent discrimination against the interests of American importers handling fine earthenware and chinaware products. Our objections are limited solely to section 13 of the bill.

The proposed Customs Simplification Act by section 13 thereof would eliminate the use of foreign value as the basis for appraising merchandise and require customs appraisers to (1) apply export value, (2) United States value, (3) comparative value, or (4) constructed value in determining the price at which imported merchandise would be appraised for the purpose of assessing ad valorem rates of duty. At the pesent time we are generally operating very satisfactorily under the foreign-value provision, and we have never been informed by any customs official that the application of foreign value to our products results in delays, inconvenience, or additional expense to the Government. Customs officials understand the manner in which this merchandise is offered for home consumption in the United Kingdom, and we, on the other hand, understand customs' requirements upon the importation of such merchandise into the United States. It is therefore our contention that foreign value should continue to be the basis for determining duitable value for our industry.

Suggestions have been made that section 13 of the bill be amended in a manner which could possibly permit the products of some of our members to be appraised upon the basis of export value. The proposal, we understand, is to eliminate the requirement that merchandise be freely offered to all purchasers, and the demands of the statutes are met if merchandise is offered to importers who are financially independent of the seller. In the case of some of our members, this amendment, if adopted, would ont solve the problem which the repeal of foreign value would create. Accordingly, if this committee be requested to amend the bill along the lines indicated, we trust it will bear in mind that the change in language in connection with the definition of "freely offered" will not benefit all of the members in this association.

We are exclusive importers of specific lines of fine earthenware and chinaware. The factories or suppliers in the United Kingdom will not freely offer these articles to other buyers in the United States, and this restriction would prevent

the application of export value to this type of merchandise. Our methods of distribution in the United States, which are traditional in this trade, would operate as restrictions preventing the application of United States value to our products.

The next possible basis of value under the new proposal is comparative value. It would be difficult to find language vesting broader discretionary power in administrative officers. For example, it has been stated that this new proposal is intended to permit appraising officers to calculate the value of an 8-inch plate from the value of a 10-inch plate, or it might be used by appraising officers to calculate or estimate the value of a chinaware item from a corresponding earthenware item, or the reverse. Whether comparative value would be resorted to as the basis of appraisement for chinaware and earthenware cannot, of course, be foretold at this time. The provision would seem to be still subject to the limitations of export value and United States value, i. e., that the merchandise must be freely sold in usual wholesale quantities, etc.

It is feared that this broad provisoin might constitute an open invitation to appraising officers to arbitrarily fix values on imported products with the extent of possible court review and correction of such administrative action, considerably in doubt.

The use of constructed value or cost of production as it is presently denominated in the statute is open to the same complaint of customs officers that has been voiced in connection with the ascertainment of foreign value. In proposing the Customs Simplification Act, customs officials have stated the provision for foreign value should be repealed, since it has caused considerable delays to importers, has increased the burdens of the Government, and also resulted in additional expense to both importer and the United States in gathering necessary factual data. Even if this were so, the same complaint might well be made in ascertaining the so-called constructed value or, as it is now known, cost of production. Since it is necessary at the present time in ascertaining cost of production under section 402 of the Tariff Act of 1930 for investigations to be made abroad, delays necessarily occur in the ascertainment of value pending the completion of such investigations, and additional expense is borne both by importers and the Government in collecting data. For these reasons we believe that recourse to constructed value should be had only in rare instances when no other basis for determining value can be ascertained. Under the present statute, insofar as our industry is concerned, there is a feasible method, expeditiously operated, to determine the value of the products imported by our members. The measure of value is simple and direct, namely, the price at which these fine earthenware and chinaware products are offered for home consumption in the United Kingdom, i. e., foreign value.

Insofar as our industry is concerned, we submit that the repeal of foreign value would result in leaving the appraisement of our products up in the air without fitting us into any of the suggested bases of value other than comparative value. We have already stated our basic objections to the use of this hypothetical value which is unrealistic in practice and does not furnish any yardsticks by which a businessman can measure his costs.

We therefore urge that this committee amend H. R. 5505 and restore foreign value as a base for appraising imported merchandise. Unless section 13 of the bill be amended to provide for the use of foreign value for products of our industry or others similarly situated, then, although we are sympathetic with the broad purposes and objectives of the legislation, we believe the bill should be defeated and existing law left in its present form.

Senator HOEY. Any questions? If there are no questions, thank you very much, Mr. Hinckley.

This concludes the hearing today. The hearing will now be recessed until tomorrow at 10 o'clock.

(Whereupon, at 11:55 a. m., a recess was taken until 10 a. m. Thursday, April 24, 1952.)

98600—52——8

CUSTOMS SIMPLIFICATION ACT

THURSDAY, APRIL 24, 1952

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 312, Senate Office Building, Senator Robert S. Kerr presiding.

Present: Senators Kerr, Frear, Butler of Nebraska, and Martin.

Also present: Elizabeth B. Springer, chief clerk; and Serge N. Benson, professional staff member.

Senator KERR. The committee will come to order.

Mr. Strackbein, come around and sit down.

To begin with, we will insert in the record a statement of the American Farm Bureau Federation, a statement of George Hansen, president of the National Retail Dry Goods Association, a statement by the drug, chemical, and allied trades section of the New York Board of Trade, a statement of Mr. Oren O. Gallup, executive vice president of the Export Managers Club of New York, and a statement of Senator Karl E. Mundt.

(The documents referred to are as follows:)

AMERICAN FARM BUREAU FEDERATION,
Washington, D. C., April 21, 1952.

Re Customs Simplification Act of 1951 (H. R. 5505).
Hon. WALTER F. GEORGE,
Chairman, Senate Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: The American Farm Bureau Federation recommends the enactment of legislation which will simplify and expedite existing customs procedures to the maximum feasible extent, including any provisions which will result in more uniform and rapid classification of products and commodities for customs purposes. We believe that H. R. 5505, now under consideration by your committee, will accomplish the primary objectives toward this end.

This subject has been considered by the voting delegates of the American Farm Bureau Federation on several occasions. We quote the following applicable portions of our resolution dealing with this subject:

"The reduction of customs barriers and a freeing of world trade from the shackles of currency and quantitative trade restrictions should be the most important objectives of the United States trade policy. These objectives must be considered not only in our own economic self-interest, but rather in a firm belief that the creation of healthy economic conditions and the development of strong self-supporting economies in the nations of the free world are vitally important to our security. If America is to be effective in helping accomplish these objectives, we must look realistically at our own trade policies and make the necessary changes in order to contribute our part in this endeavor.

"We again recommend that our customs regulations be modified under existing tariff schedules in order to encourage expansion of international trade. Even though provisions are made in the ITO Charter to accomplish this purpose, we recommend that the proper agencies of Government take the necessary steps to modernize the United States customs regulations. We recommend passage of legislation to accomplish this."

H. R. 5505 has as its major objectives the streamlining and simplification of customs procedures. The subject is a highly technical one. We are in no position to conclude that each and every provision of the bill is desirable; however, we do want to support the major objectives of this bill and to recommend to the Committee on Finance their approval of the bill with whatever revisions your scrutiny will disclose as being desirable to accomplish these major objectives.

In recent months the Treasury Department, through administrative instructions to customs officials, has clarified many of the complicated provisions of our customs procedures. We believe that a great deal more can be done by the Treasury Department under existing legislation. With a continued effort by the executive branch of our Government toward customs simplification, together with the major objectives of this bill, our customs regulations can be materially improved.

We respectfully request that this letter be made a part of the record in lieu of personal testimony before your committee.

Sincerely yours,

JOHN C. LYNN, *Legislative Director.*

STATEMENT OF GEORGE HANSEN, PRESIDENT, NATIONAL RETAIL DRY GOODS ASSOCIATION

My name is George Hansen. I am president of the National Retail Dry Goods Association, a voluntary association of 7,500 department and specialty stores located in every State in the Union.

I want to bring to the attention of the committee the strong objections of our association to section 321 of H. R. 5505, now being considered by the committee.

This bill, according to its title, is designed to simplify the customs procedures now in use. Certainly, no one could object to such a worthy purpose. However, incorporated in this legislation in section 321 is a provision that would if this bill is adopted, open up the floodgates of foreign competition for American retailers. I want to believe that the author of this legislation did not appreciate the danger that is inherent in this one section of the bill.

The retailers of this country are well schooled in the field of competition. When a man or woman enters the retail field they do so with the knowledge that to succeed they must be able to serve the consuming public with merchandise they want and at a price they are willing to pay. If they fail to serve, their store cannot remain in business. This we understand. However, American retailers cannot compete with foreign firms under the circumstances that would be created by this legislation.

We must maintain attractive places of business. In order to serve our customers we must go into the market and buy merchandise in quantities to satisfy demands, in styles and colors that will appeal and be ready to do everything that a purchasing agent for the customer is expected to do.

In addition to the above we must hire expert help to man our stores, promote the sale of goods, for after all the economy of this country prospers not because of the goods our factories produce, but rather upon what is sold across the counters of our stores.

Now, once we have the store, the merchandise and the staff, we are ready to do business. However, then comes the burden of taxes that are levied by the Federal, State, and local governments. Many States and many municipalities have sales taxes. Then, too, when we import foreign-made goods we must pay duty upon them before we can offer them for sale.

Contrast this situation with that of the foreign operator, if this bill is adopted. According to section 321 of H. R. 5505, a foreign operator, no doubt from a country that has been the recipient of billions in aid, partially paid by the taxes upon American retailers, can advertise and sell in this country goods selling for $10 a shipment and mail them to our customers duty-free. The irony of this situation is that we would find some of the tax dollars we have paid being used to damage us.

A European operator could place an advertisement in a newspaper or magazine in the United States and offer to sell gloves, handbags, slippers, blouses, skirts, sweaters, perfumes, costume jewelry, cosmetics, and a host of other items. These items could be priced upward of $10. Realize that the advertiser does not maintain any quarters in this country. He does not pay any real-estate, income,

or other taxes. He does not pay any duties. He does not maintain a selling force. His only expense would be the advertisement.

The members of the National Retail Dry Goods Association feel that this type of competition should not be permitted and we are hopeful that your committee will delete this harmful section. An amendment to the House bill was considered by some to remove the harmful features of section 321. This amendment would prevent C. O. D. shipments under this bill. But, gentlemen, I can assure you that any American consumer who could buy for $10 a sweater that an American retailer could not offer for less than $18 or $19 would not be discouraged by the bar against C. O. D. shipments.

We sincerely believe that this section is unfair, unjust, and places upon one segment of our economy a double load. The retailer would be forced to help pay the bill for foreign aid and then be placed in jeopardy by foreign competition created by this legislation.

In closing, let me urge your serious consideration of this appeal. The members of our association sincerely hope that the committee will delete section 321 of H. R. 5505.

DRUG, CHEMICAL AND ALLIED TRADES SECTION,
NEW YORK BOARD OF TRADE, INC.,
New York, N. Y., April 22, 1952.

Customs Simplification Bill (H. R. 5505).

Senator WALTER F. GEORGE,
Chairman, Senate Committee on Finance,
Senate Office Building, Washington, D. C.

SIR: The drug, chemical ,and allied trades (DCAT) section of the New York Board of Trade, through its membership of more than 750 members, represents a cross section of the country's drug- and chemical-manufacturing industry and others closely related thereto. This section is keenly interested in true simplification of customs administrative procedure.

As chairman of this section, I have the honor of presenting herewith our testimony in writing on H. R. 5505, the bill on which you and your committee are now holding hearings. This is respectfully submitted for the consideration of the Senate Committee on Finance.

The members of the drug, chemical, and allied trades section of the New York Board of Trade recognize that H. R. 5505, the bill now before the Senate, is a marked improvement over H. R. 1535, the bill on the same subject, which was introduced to the House of Representatives in January 1951.

Notwithstanding this, there remain two sections in this bill, H. R. 5505, which are of predominant concern to our membership.

In our written testimony presented to the House Committee on Ways and Means during the public hearings on H. R. 1535, predecessor of H. R. 5505, we had urged that the sections of our existing laws representing modification for the purpose of implementing general commercial provisions proposed in the late Habana Charter for an International Trade Organization and in the surviving provisionally applied general agreement on tariffs and trade be segregated from the bill. Our objective was to facilitate the rapid examination of the balance of the sections bearing on the advertised purpose of the bill, simplification of customs administration, and to permit careful scrutiny of the sections related to the GATT, when that agreement was examined as a whole by Congress, as it should be.

The House did not go along with this line of thinking but did in fact eliminate some of the controversial subjects in issuing and approving H. R. 5505.

The two sections of this bill, which we wish to call to the special attention of the members of this committee, are sections 2 and 20, the texts of both of which are to be found in the Habana Charter for an ITO and in the GATT.

Referring to section 2, we consider the proposed modification of the countervailing duty provisions a weakening of our recourse against the use of an unfair method of competition, the subsidizing of merchandise for export to the United States by public or private methods. This bill, H. R. 5505, proposes in section 13 that export value to the United States become the first and most important basis of evaluation for imports, where the rate of duty is, in whole or in part, a percentage of value. The only protection against abuse of this method of evaluation lies in effective antidumping procedures and countervailing duty provisions. While agreeing that these two special duties should not be piled one on the other

but that one or the other be applied as the case warrants, we urge that your committee consider the tightening of the terms of our Antidumping Act of 1921, by making mandatory the investigations by the Secretary of the Treasury to determine the existence or threat of injury, and continuing unchanged, except for one amendment, the present provisions for countervailing duties, section 303 of the Tariff Act of 1930. The amendment referred to is proposed in the bill: to insert after the words "corporation shall" in the first sentence the words "through multiple official rates of its exchange in terms of United States dollars, or otherwise."

Examining section 20, "Conversion of currencies," this section proposes principally that we abandon our present system of basing the ratio or exchange value of foreign currencies in relation to our national currency unit on the official weight of fine gold in each country's coins. The present proposal is that our customs authorities adopt standards of conversion based on par values filed by most of its members with an international body known as the International Monetary Fund. The IMF was created as a specialized agency of the United Nations Organization for the purpose of determining the value of member currencies, stabilizing that value, and keeping it stable. For reasons beyond its control, the fund has never been able to perform its functions. We think it is premature, to say the least, to bring the IMF picture into our customs administrative provisions.

While it is a fact that the free circulation of gold coin has been considerably reduced, if not prohibited, gold is still the universal medium for settling international trade and financial accounts. Gold reserves are generally kept now in the form of "bricks." We find that the official par values, filed by the members with the IMF for conversion of the currencies, for instances into United States dollars, are based on the officially proclaimed fine-gold content of each country's monetary unit. This information is public.

Therefore, to conform our laws to modern practice, it is only necessary to change, in section 522 (a) of the Tariff Act of 1930, quoting section 25 of the act of August 27, 1894, all references to coin and use the words "monetary units." Section 25 would then read: "That the value of foreign *monetary units* as expressed in the money of account of the United States shall be that of the pure *gold content* of such *standard monetary units;* and the values of the *standard monetary units* of the various nations of the world shall be, etc." [Italicized words are the proposed new words.]

With this change, which we recommend, our existing practice of converting foreign currencies for customs purpose becomes entirely workable. We see no justification for the suggestion to repeal article 25 of the act of 1894.

As we have written, sections 2 and 20 are the two sections of this bill which cause most concern to our membership, but we should not like to close this letter without letting the Committee on Finance know that we are thoroughly mystified and anxious over two items in section 13 of the bill, entitled "Value," which amends section 402 of the Tariff Act of 1930. None of our members are experts on customs administration so that we have to refrain from a detailed examination of the wording of these two paragraph. We must leave it to more expert minds to draw out the meaning, but to us laymen connected with both domestic and foreign trade movements, the words seem so vague, so imprecise as to make it difficult to understand both the meaning and the scope of the proposals. We therefore call these to the attention of the committee for careful examination. We are referring to paragraphs (a) (3), (d), and (g) of the proposals under section 13.

The first two, (a) (3) and (d), have to do with the addition of a new basis of evaluation for customs purposes, called comparative value, to be used if both export value to the United States and United States value cannot be ascertained satisfactorily, prior to falling back on the last alternate basis of evaluation cost of production or constructed value as it is to be renamed in this bill. It seems to us that the definition of comparative value, paragraph (d) is so vague as to broaden without conceivable limit the area within which a customs appraiser is permitted to use his discretionary powers. This is bound to generate interminable litigation and might, in the long run weaken the moral stamina of the whole customs service. The appraiser's power to estimate should be reserved as a last recourse after all defined bases of evaluation have been exhausted. That is the present procedure, under section 500 of the Tariff Act of 1930.

Paragraph (g) of section 13 entitled "Taxes" is another vague proposal, which is taken verbatim from article 35, paragraph 4 of the Habana Charter for an International Trade Organization and article VII, paragraph 3, of the provi-

sionally effective General Agreement on Tariffs and Trade. Is this a wide open invitation that export merchandise be exempted from any foreign internal taxes while domestic products have to bear the load of all American taxes on profits and excise taxes? What is that text doing in section 13 anyway? Where does the proposal apply to any of the suggested bases for evaluation? It might apply to "foreign value" but this basis of evaluation is eliminated from the present bill. We do not think that paragraph (g) has any place in this bill and we urge that it be eliminated.

I have the honor to remain,

Yours very truly,

CHARLES M. MACAULEY, *Chairman.*

THE EXPORT MANAGERS CLUB OF NEW YORK, INC.,
New York, N. Y., April 21, 1952.

Senator WALTER GEORGE,
Senate Office Building, Washington, D. C.

DEAR MR. SENATOR: The Export Managers Club of New York, Inc., is composed of export executives of America manufacturing concerns. We have nearly 700 members located in 22 different States. The companies with whom our members are associated produce over 80 percent of the manufactured exports from this country. We are anxious, as far as possible, to have international trade conducted with as few obstacles as possible.

For that reason we urge favorable action on the customs simplification bill (H. R. 5505). It is our hope that as this bill provides only for simplification and bringing up to date customs procedure which has long been needed, that positive action will be taken at this time.

As you of course realize, international trade is a two-way proposition. To export we must have imports. Anything which can be done to facilitate the proper handling of our imports when they arrived in this country should be done without delay.

May we hope for favorable action on the part of your committee?

Very truly yours,

OREN O. GALLUP,
Executive Vice President.

UNITED STATES SENATE,
Washington, D. C., April 22, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR: The committee clerk has informed me that hearings on H. R. 5505, the Customs Simplification Act, are to begin before your committee today. I am therefore writing you today in behalf of my amendment to H. R. 5505.

My amendment to H. R. 5505 was introduced simultaneously with S. 2668. As you perhaps know, the latter would amend section 303 of the Tariff Act of 1930 to spell out in clear detail the terms "bounty" and "grant." The language contained in the amendment and S. 2668 is identical and would, of course, accomplish the same ends.

I am sure your committee is aware of the fact that our Government is at this time endeavoring to expand our domestic wool production to the point of insuring 360 million pounds of shorn wool in this country annually. During the years 1942 and 1943 when our Nation was faced with the monumental task of equipping and clothing millions of men for military service, domestic wool production was held at a figure considerably in excess of the present goal of 360 million pounds. In view of the Defense Establishment's high wool requirements, the Government's policy at this earlier date to maintain an adequate domestic production of wood was indeed commendable.

It appears to me that the Government's present policy to encourage a supply of 360 million pounds of shorn wool is equally provident. Certainly wool is a highly strategic commodity, for the importance of wool fiber to the security of our Nation and the over-all defense effort is, I believe, without question.

It is, then, for this reason that I believe that the Congress would be derelict in its responsibilities if it were to allow a situation to continue which is in itself a threat to the realization of present goals and objectives. I refer to the dump-

ing of wool tops on the United States market by the South American countries of Argentina and Uruguay.

In the United States, it costs about 48 cents per pound to manufacture 60s grade wool tops from 60s grade wool, yet, Argentine and Uruguayan top manufacturers, with the aid of special export exchange rates, are able to deliver wool tops in this country at the same price as the wool from which these tops are made.

This is accomplished by the Argentine Government's granting top exporters an official export rate of exchange on tops of 7½ pesos per United States dollar whereas the wool, from which these tops are made, gets an official export rate of only 5 pesos per United States dollar. In actual fact South American manufactured tops have been underselling tops manufactured from wool produced in this country by over 38½ cents per pound.

On April 1, 1952, the Commodity Credit Corporation announced the wool support program in the form of a nonrecourse loan. The nonrecourse program on a comparable grade of domestic wool will be approximately $1.51 per clean pound, Boston basis. A top made of this same quality of domestic wool, by adding 48 cents conversion costs, would cost about $1.99 as compared with the price of $1.52 for the comparable Uruguayan top. Therefore, it will readily be seen that this competition from South American top manufacturers will seriously interfere with the operation of the domestic support program so recently put into effect.

Certainly, if this situation is permitted to exist and is projected into the future, not only will the support program for wool so recently announced by the Government be endangered, but the objective of 360 million pounds of wool will be a difficult one indeed to achieve.

Under section 303 of the Tariff Act of 1930 the Secretary of the Treasury is authorized to impose countervailing duties equal to the existing bounty or grant in just such instances as now exist between this country and Argentina and Uruguay.

The Secretary has been petitioned in this regard but has declined to invoke countervailing duties on the basis that the favorable rate of exchange by which wool top exporters were granted a 7½-peso rate of exchange as compared with the 5-peso rate of exchange for exporters of the unprocessed produce is not in actuality a bounty or grant but is a penalty against the exporters of the raw or unprocessed product.

It is my contention that the Secretary's reasoning in this particular instance is fallacious and does not reflect the provisions of section 303 of the Tariff Act of 1930. Consequently my amendment to H. R. 5505 would strengthen the language contained in the act by spelling out in clear detail the terms bounty and grant to include such favorable rates of exchange.

I believe that enactment of this amendment is essential to the health and development of an adequate production of domestic wool and I sincerely hope the committee will give it earnest consideration.

I would appreciate it if you would have this letter made a part of the official record for the hearings on H. R. 5505.

With best wishes, I am

Cordially yours,

KARL E. MUNDT, *United States Senator.*

Senator KERR. All right, Mr. Strackbein.

STATEMENT OF O. R. STRACKBEIN, CHAIRMAN, NATIONAL LABOR-MANAGEMENT COUNCIL ON FOREIGN TRADE POLICY

Mr. STRACKBEIN. Mr. Chairman, my name is O. R. Strackbein. I am Chairman of the National Labor-Management Council on Foreign Trade Policy.

The original bill, as introduced in the House, Mr. Chairman, contained a number of provisions to which we objected very strenuously.

Senator KERR. You say "we;" do you mean the National Labor-Management Council?

Mr. STRACKBEIN. Yes.

Senator KERR. Do you have any further identification?

Mr. STRACKBEIN. This organization is composed of parallel representation of national and international unions and management in some 15 industries.

Senator KERR. Fine.

Mr. STRACKBEIN. As I say, we opposed very strenuously a number of the provisions that appeared in the original bill. We opposed them for one principal reason: they had little or nothing to do with customs simplification.

They were imported from the charter of the International Trade Organization and the General Agreement on Tariffs and Trade.

Now, the Ways and Means Committee, in its recommendation to the House, eliminated most of those provisions that were objectionable to us and to other people. The House passed the bill, as recommended by the Ways and Means Committee, so the clean bill that is before the Senate Finance Committee at this time is free of most of those provisions to which we took exception.

The House bill also carried what is called a caveat or a caution or a notice that the passage of this bill should not be taken as any indication or support or lack of support of the General Agreement on Tariffs and Trade.

The reason for that lies in the fact or lay in the fact that since there were certain provisions in the bill which were designed to modify our existing statutes to bring them into conformity with certain provisions of the General Agreement on Tariffs and Trade, which were in conflict with these existing statutes, it was felt desirable to make this clear, that the passage of this bill did not or should not be construed as an endorsement of the General Agreement on Tariffs and Trade, because——

Senator KERR. The purpose was to leave GATT just where they found it.

Mr. STRACKBEIN. That is exactly it.

Senator KERR. All right.

Senator BUTLER. Your organization is not in agreement with the GATT entirely, then?

Mr. STRACKBEIN. No. We thought that if GATT was to be ratified by Congress it should be ratified through a bill submitted for that purpose rather than by indirection.

As far as the present bill, H. R. 5505 is concerned, we still oppose making injury a consideration in the imposition of a countervailing duty. That is not now a requirement of law.

We also oppose writing in the word "material" before the word "injury" in the section relating to antidumping.

In fact, with respect to the antidumping section we would like to see an amendment adopted which would facilitate a finding under that section, particularly with respect to the Communist-controlled countries of the world.

At the present time in order to make a finding of dumping it is necessary to determine that the price at which the goods are offered in the United States or to the United States is lower than that generally prevailing in the country of export.

Now, there are several ways of making that determination: The most direct and natural way of making such a determination is to compare the export price with the price in the country of export. If the offered price or the stated price is less than the going price in

the country of export, we have evidence of dumping, but today there are a number of countries in which no such investigation can be made, where we have no access whatsoever to the necessary data, and where a finding of dumping becomes very difficult to establish.

We feel that under such circumstances when there is a reasonable suspicion of dumping, an actual presumption should be raised that there is dumping if we are prevented from obtaining the necessary data in the country of export.

In other words, the Antidumping Act, as it stands today, is rendered somewhat ineffective; many delays are introduced because we do not have access to the necessary supporting data in the foreign country, and I am speaking now of the so-called iron-curtain countries.

Senator BUTLER. You do not think that there would be any difficulty, though, in making a decision with reference to the damages from dumping here in this country, do you?

Mr. STRACKBEIN. No. The damage in this country can be established by hearing of the interested parties, and those who are affected, but in order to establish the fact of dumping, it is necessary to demonstrate that the export price, the price at which the goods are offered in this country by the exporting country are actually lower than the prices prevailing in those countries; in other words, the definition of dumping includes that sort of condition.

If these countries deny access to the necessary data for proof, our enforcement is greatly crippled, and in some instances, perhaps, rendered impossible. In other words, the Antidumping Act is frustrated to that extent.

Now, if a presumption were included in the law——

Senator BUTLER. If what?

Mr. STRACKBEIN. If a presumption of dumping—if after a certain period of time, 6 months or a year, we have still been denied access to the necessary data, then the law could be enforced.

There are instances today where dumping is alleged, but where proof from the other country cannot be obtained simply because we have no access to the price information.

In that event, there is no certain way, and certainly no quick way, of establishing proof in this country. The only sort of proof that can be obtained is indirect proof, and when we are prevented from getting the direct proof from the other countries, the iron-curtain countries, our hands are very much tied, and delays are introduced into the administration that virtually nullify the antidumping provision.

Senator BUTLER. Your suggestion is then to include—to amend this to include——

Mr. STRACKBEIN. Yes, there is a section, section 2 of this bill which already undertakes to amend our Antidumping Act, but this suggested amendment, if anything, will make it more difficult to enforce the act than the existing act. Therefore, we suggest this amendment which would facilitate enforcement of the act against imports that are dumped in this country from Communist-controlled areas.

Senator KERR. Wouldn't it be applicable to any areas? I mean, if I get what you say——

Mr. STRACKBEIN. It would indeed.

Senator KERR. I take it that your suggestion goes to the principle of protecting American economy from dumping regardless of what the source might be.

Mr. STRACKBEIN. That is correct. I have used the Communist-controlled countries as examples of areas that do not give us access to the necessary price data.

Senator KERR. I understand.

Mr. STRACKBEIN. If any other country refused to give us that access, naturally, the provision should apply to them.

There is one other spot where I would suggest an amendment, and this matter was before the Ways and Means Committee during their hearings. It has to do with section 308, subsection 3, and relates to the importation of samples not for sale but for the purpose of taking orders or with a view to reproduction.

That particular section has permitted the importation of certain items, particularly photoengraved plates under bond, the making of electrotypes from these plates, then sending back the original plates without payment of duty, and using the electrotype made from them for printing purposes, photoengraving purposes.

Now, we feel that it was not the intention of section 308, when it was first written, to make possible any such circumvention of the payment of duty.

Representative Wilbur Mills, of Arkansas, a member of the Ways and Means Committee, brought up this question in the hearing before the Ways and Means Committee. I have a transcript here of the questions that he asked of the Treasury Department witnesses and their replies. I would like to have that inserted into the record at this point, as well as——

Senator KERR. Is that already in the House record?

Mr. STACKBEIN. It is in the House record.

Senator KERR. How long is it?

Mr. STACKBEIN. It runs six pages, double-spaced.

Senator KERR. All right.

(The document above referred to is as follows:)

HEARINGS BEFORE THE COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, ON THE CUSTOMS SIMPLIFICATION BILL

[Dates of hearings: August 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, September 13, 14, 17, 18, and 19, 1951]

* * * * * * *

Mr. MILLS. Mr. Nichols, do you find that there is any possibility of abuse, or any actual abuse, of section 308, as now in effect? Do you ever find that there are articles brought in under this section free of duty which are reproduced or copied for commercial use or sale?

Mr. NICHOLS. Let me answer that in this way: There is a considerable number of cases where importers import goods they mean to reexport within the period and then they want to sell the articles. This is particularly the case with respect to model gowns. Model gowns are among the articles that are subject to this bond procedure and the practice of customs is, where there is no reason to doubt the good faith of the importer in intending to export when he first brings it in, and if there is a change in circumstances that leads him to want to sell, that the bond is canceled on payment of the duty plus 25 percent.

Now, with regard to fraudulent evasions, the bond procedure is pretty tight because, of course, the bond remains in effect and there is a surety company on it, and if it is not canceled after the year expires the fiscal controls of customs would lead to a demand being made upon the surety company in due course.

Mr. MILLS. I understand there is a situation which is permissable under present law which gives rise to some question in my mind about the proper use of this section. Do you know the situation with respect to the photoengraving plates?

Mr. NICHOLS. Yes; I have in mind the situation that you are referring to.

Mr. MILLS. Mr. Eberharter, a member of the committee, introduced a bill some weeks ago, on April 13 of this year, proposing to exclude from the scope of section 308, photoengraving plates which are brought into this country for the purpose of being reproduced. I understand that these photoengraving plates carry a 15-percent ad valorem duty; is that right?

Mr. NICHOLS. A substantial duty.

Mr. MILLS. But an importer may bring a photoengraving plate into the United States under this section duty-free. Then he can make an electrolytic plate of the photoengraving and use that electrolytic plate for pictures. As a result, the people in this country who are engaged in producing photoengraving plates may lose an opportunity for employment.

I can see that either their standard of living would be reduced to the wages of Great Britain or some other country, or else they would have to go into some other line of employment.

I am wondering if it was ever intended originally when section 308 was passed to permit its use in such a way as that.

Mr. NICHOLS. Let me call your attention to subsection 3, which permits to come under this procedure samples solely for use in taking orders for merchandise, or for examination with a view to reproduction. Now, as I understand it—and Mr. Johnson can correct me if I get off the beam—the long-established practice of the customs service, pursuant to decisions of the customs court, has been that the words "for examination with a view to reproduction" cover the situation where an article is brought in for the purpose of having reproductions made of it.

You have the case of the model gown, which is one of the cases actually covered in the court's decision, where the model gown was brought in and reproduced and other gowns like it were made and marketed.

Mr. MILLS. Let me interrupt you at that point. I can see that the situation of the model gown is in line with this paragraph 3 of section 308, but I have difficulty in understanding that a reproduction of an electrolytic plate from a photoengraving plate is a reproduction within the meaning of paragraph 3.

Mr. NICHOLS. I might add that I understand the same rule applies to articles such as master plates that are made use of in making phonograph records; that is to say, you can transcribe somebody's singing abroad and bring in the wax recording of that and employ it in making phonograph records in this country through various intermediate processes, and reexport the original wax impression and have the bond canceled so that the whole thing will be free of duty.

Under this provision—and I am not in a position to argue all the refinements of the proposition which involve an analysis of two or three Customs Court decisions and involve of course questions about the legislative history of this provision—but I understand that until recently it has not been seriously questioned that the legislative intent was broad enough to cover this situation.

If the customs service is wrong, of course the Congress can say so, but where a practice is followed for a substantial period of time, and following a court decision, the service has naturally felt that whatever original question there might have been has been cured by the passage of time.

Mr. MILLS. It is certainly in the best interests of our own country to bring in something that is produced abroad, if we need it here, and from a sample of that article we can have something available here that we would not otherwise have. But it is hard for me to conceive that those who wrote the Tariff Act of 1930 intended to create a situation wherein such a practice would develop as has grown up in connection with the photoengraving plates. As I understand the intention of the people who drafted the act of 1930, they did not intend to put articles on the free list except by specific designation. They were thinking rather in terms of increasing the duties on most items.

Mr. JOHNSON. Mr. Mills, the customs service adopted the interpretation that you have suggested and for a considerable time held that articles could be imported for examination with a view to reproduction under section 308 (3) only if the identical article imported was to be duplicated. However, the court held in two different cases, first, that certain model gowns could be imported with a view to reproduction therefrom of paper patterns which surprised us a great deal, but of course the court determines what the law is.

Secondly, they held that certain drawings and paintings made by hand could be imported for the production of wallpaper.

Now, from those decisions the present practice has developed, and I do not believe that we have gone one iota beyond the principle of those decisions.

Mr. MILLS. In the beginning you must have shared the thought that the statement that I am now expressing was a correct interpretation of the law.

Mr. JOHNSON. That was our original interpretation.

Mr. MILLS. It would appear to me, notwithstanding the decisions of the court, that perhaps your original thought, and the expression of mine today, is still the intention of the group who drafted the Tariff Act of 1930. I do think that perhaps, as we go further into this matter, it might be well for us to define what we mean by "reproduction." I see that there is a possibility of a growing use of this section 308 that would not be in the best interests of the people here. There are many things that can be done under it, things which we want to continue to permit, because they are in the best interests of our people. However, to circumvent the payment of duty by reproduction of a different article, such as an electrolytic plate, I think should be corrected before that practice spreads to the detriment of those who now produce photoengraving plates in the United States.

Mr. MASON. Perhaps then it is our job to clarify these court decisions so that they do not go further than the intent was and perhaps that ought to be done in this bill, if it is a clarifying bill.

Mr. MILLS. That was my thought, that we could do it in the bill.

Mr. NICHOLS. I would like to say, if the committee feels—and I can understand how they might feel there is a loophole here—we certainly would be glad to give whatever assistance we can in drafting a suitable provision.

I think your bill, Mr. Mills, of course applies to only one of the cases in which that rule has been applied.

Mr. MILLS. That is the weakness of the bill. It should be applied generally to exclude every situation where it is not—and I am expressing a personal opinion—a reproduction in kind.

Mr. NICHOLS. Just expressing a personal opinion, I would think the committee would probably prefer, if they were going to handle this, not to single out a specific commodity, but deal with the matter across the board, and if this legislation has been misinterpreted by the court, then certainly this is the time to correct it.

Mr. COOPER. Let me ask a question for information. It is the effect of this provision now being discussed in the pending bill to reestablish the interpretation that was followed before the court decision to which Mr. Johnson has referred?

Mr. NICHOLS. No, sir. The bill that we have before you would not affect that at all because all it does is to extend the bond period to 3 years, and if you are going to take care of the situation that Mr. Mills is talking about you are going to have to have some other amendment that is not now in this bill.

Mr. MILLS. Perhaps Mr. Cooper has in mind that the suggestion I was making with respect to this problem would restore the original interpretation of the Bureau of Customs prior to the court decision.

Mr. NICHOLS. You evidently would have to use different language than they used before because the court has interpreted the language previously used.

Mr. MILLS. Language that would clarify the intent a little more.

Mr. NICHOLS. Are there any other questions on this section, Mr. Chairman? If not, I would like to go on.

The CHAIRMAN. You may proceed.

* * * * * * *

Mr. STRACKBEIN. Then, there is an analysis of the legislative history of that particular section going back to 1927, 1929, 1930, that is, the Tariff Act of 1930, which develops the reasoning behind the importation of samples, with the purpose of simply taking orders or with a view to reproduction.

The legislative history, I believe, will show that there was no intention whatsoever of permitting importation under bond in the manner that has developed, and I would like to offer that legislative history and background of this particular section also for the record. It is four pages.

Senator KERR. All right.

(The document above referred to is as follows:)

[Tariff Adjustment, 1929, hearings, Committee on Ways and Means, vol. 16, pp. 9966-9968]

MEMPHIS, TENN., *July 2, 1927.*

HON. HUBERT F. FISHER,
House of Representatives, Washington, D. C.

DEAR SIR: On account of not understanding the proper procedure, the following matter was first called to the attention of Senator McKellar * * *

A few months ago our firm was sent some golf-club heads from Australia for use as patterns or models. We were forced to pay duty, although the heads we made from these patterns were for export to Australia. In other words, the United States tariff laws * * * operated in this instance to handicap a domestic manufacturer trying to develop trade with foreign countries.

* * * Upon taking up the matter with the Bureau of Foreign and Domestic Commerce, I understand that the lack of such authority in our present tariff law has proven a handicap to American manufacturers in a number of lines, who, like ourselves, are interested in building up their production of goods in this country for export by duplicating models and patterns upon which those of other countries find a ready demand to exist in given foreign countries.

* * * I beleve you would be doing a service to American exporting manufacturers, generally, if you would * * * introduce * * * a bill modifying section 308 * * * so as to include among the articles now admissible without duty, articles imported by manufacturers of similar products intended solely for comparison and reproduction, and not for sale. Manufacturers would, I am sure, be willing in such cases to give bond * * * that such imported articles will not be resold, thus eliminating any possible objection from domestic producers or that there was any weakening of the tariff provisions accorded them under the regular duties.

* * * I feel that our tariff laws should be designed to protect domestic trade, but without interfering with the development of our foreign commerce. * * *

W. R. SCOTT, GOLF SHAFT & BLOCK CO.

HON. WILLIS C. HAWLEY,
Chairman, Ways and Means Committee,
House of Representatives, Washington, D. C.

DEAR MR. HAWLEY: The Golf Shaft & Block Co., manufacturers and exporters, in Memphis, Tenn., find it necessary in their export trade, to bring into this country samples of foreign manufacture which are intended solely to be used for comparison and reproduction and are not for sale * * *. The secretary of this concern expresses clearly the reasons why they would like to have exemptions from tariff on these samples in the following paragraph of a letter to Hon. William R. Green, dated January 19, 1928:

"Our people have been exporting the materials from which golf clubs are made for many years, but these materials were in a stage of manufacture known as 'in the rough'—that is, it consisted of rough-sawn dimension stock. For some time we have endeavored to develop an export trade for our material in a more advanced stage of manufacture. After receiving a great deal of encouragement from one branch of our Government that is organized to develop and enlarge our foreign trade, it was quite a shock to learn that our tariff laws did not exempt from duty samples of foreign manufacture, when intended to be used solely for comparison and reproduction, and not for sale, especially when the articles produced in an American plant were to be exported, thereby adding to our foreign trade."

The question was presented to the House legislative counsel as to an amendment to the tariff laws and it was thought best to add to paragraph 4 "also samples intended to be used solely for comparison and reproduction and not for sale." It would seem that it would be only fair to a manufacturing concern, which is a large exporter of such things, to permit him to import samples duty-free for the purpose of comparison and reproduction.

I hope the committee will write this amendment into section 308 and add it to paragraph 4.

Very truly yours,

HUBERT F. FISHER, *Member of Congress.*

[Tariff Adjustment, 1929, hearings, Committee on Ways and Means, vol. XVI, p. 9784]

DEPARTMENT OF COMMERCE,
March 15, 1929.

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

MY DEAR MR. HAWLEY: In reply to your invitation of February 14 for any suggestion relative to the administrative paragraphs of the Tariff Act * * * I indicated that we would present shortly a number of suggestions with regard to certain of these administrative features which have an interest for us in making the Tariff Act help in the promotion of American export trade.

* * * This communication will confine itself to matters not involving the import-tariff controversies, but rather those primarily affecting our export trade. We offer suggestions on three subjects:

1. * * *.
2. * * *.
3. Temporary duty-free importation of samples for examination and possible reproduction.

The detailed suggestions of the Department on these subject and the reasons for our recommendations are presented in the attached brief.

Very truly yours,

E. F. MORGAN,
Acting Secretary of Commerce.

[Part of the brief relating to sec. 308 (p. 9786)]

Section 308. Temporary free admission of samples for examination and reproduction

The Department of Commerce has from time to time been approached by American manufacturing concerns with requests for assistance in securing the admission into this country of samples of foreign articles which they found were offering severe competition to their own products in common-export markets. These samples the American producers desired to bring to their plants in the United States for careful examination with a view to possible reproduction of similar articles in the United States. Because of the bearing of these requests upon the promotion of American export trade, officials of this Department have taken the matter up with the customs service of the Treasury Department, as have also a number of American importers themselves, asking whether, in view of the purpose for which such importations were desired, they could not be granted the privilege of temporary free admission under bond for reexportation within 6 months under section 308 of the Tariff Act of 1922.

It was urged that such importations constitute a close analogy to models of women's wearing apparel imported by manufacturers for use solely as models, and to samples imported solely for use in taking orders, which are among the cases now afforded such duty-free importations under section 308.

In reply to such requests, the Treasury Department has stated that under the present law, it finds itself without authority to allow such temporary free entry of articles imported for the purpose of examination precedent to possible manufacture.

In view of the fact that the privilege sought is not essentially different from those already granted to similar classes of samples under section 308 of the tariff law, the Department of Commerce suggests for the consideration of Congress the addition to that section of a specific provision authorizing the temporary duty-free entry under bond of samples intended to be used solely for comparison and possible reproduction, but not for sale.

It is believed that this provision can be granted without injury to domestic producers, since the number of articles involved would be very small and would not enter the markets of the United States, and with possibly considerable benefit in the strengthening of the ability of American producers to compete in foreign markets by supplying the type of article which apparently best meets the local demand.

[Tariff Act, 1930, House and Senate reports to accompany H. R. 2667 (Smoot-Hawley bill), pp. 160, 161]

Section 308

* * * Molders patterns for use in the manufacture of castings are included in the list of articles which may be imported under this section of the 1922 act. The attention of your committee has been called to the fact that from their very nature such patterns can quickly and easily be duplicated, so that temporary free importation is equivalent to relieving patterns from the payment of duty entirely. They are, therefore, omitted from the list in this bill.

Samples may be imported under the section only for use in taking orders. The amendment extends the privilege to samples imported for examination with a view to reproduction. This should materially assist American manufacturing concerns which are meeting severe competition from foreign articles in common export markets, and it is recommended by the Department of Commerce on account of its bearing upon the promotion of American export trade. The number of articles involved would be small and the samples cannot, under the law, enter the markets of the United States without payment of duty.

Mr. STRACKBEIN. In order to rectify that section 308, subsection 3, a separate bill was introduced in the House by Mr. Eberharter, of Pennsylvania. The House Ways and Means Committee decided not to make this correction in the bill at that time.

However, in subsequent discussion with Representative Mills, he indicated that as far as he was concerned he would be entirely agreeable to having the bill amended in the Senate. It is a very, very short amendment that would make the correction.

Senator KERR. Have you got the wording which you suggest there?

Mr. STRACKBEIN. There is the wording; yes. As you see here, it is a very short bill. I could at this point, if you have no objection, introduce this into the record.

Senator KERR. Let it be inserted in the record at this point.

(The document above referred to is as follows:)

[H. R. 3711, 82d Cong., 1st sess.]

A BILL Relating to the temporary free importation of samples under bond for exportation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (3) of section 308 of the Tariff Act of 1930, as amended, is hereby amended by inserting immediately after the word "samples" the following: "(but not including photo-engraved printing plates imported to be reproduced)".

Mr. STRACKBEIN. Mr. Chairman, there is only one more matter to which I want to address myself, and that is the matter of valuation.

The present bill would alter our present system of valuation for duty purposes. It would eliminate foreign value, and substitute therefor export value.

It is my understanding from conversations with officials of the Customs Bureau that most of our imports today are actually based on export value.

At the time of the hearing before the Ways and Means Committee I made the statement that it was extremely difficult to reach a conclusion about the merits of this change. The change was recommended by the McKinsey firm in its report, but that report was confidential.

I asked to see a copy of it, and was not able to gain access to it. The Tariff Commission had a copy, but it was in confidence.

Senator BUTLER. What report is this, again, please?

Mr. STRACKBEIN. The McKinsey report, upon which this whole customs simplification bill is based. It is understood that McKinsey & Co. is an industrial-management firm that was employed by the Treasury Department to make an investigation of the customs administration and to seek methods of simplifying that administration. They did recommend this change in basis of valuation.

As I undertook to say, I assume that they included in their report certain supporting schedules, documents, factual data upon which they based their conclusion.

However, that information, those data, have not been exposed to the public, and, so far as I know, no one outside of official circles has had access to it or has been able to study the supporting data and the detailed analysis upon which their recommendations are based, and in the absence of those data, in the absence of the documentation, in the absence of the analytical data gathered by the firm, it is extremely difficult from the outside to come to any conclusion as to the soundness of the recommendation and as to any possible exceptions that might be made to the recommendations.

We are in the position of simply having to take the recommendation on faith.

Now, McKinsey & Co. is a reputable management firm of good standing; but, nevertheless, in order to pass intelligently on the conclusions reached it would seem highly desirable to have access to the detailed analysis upon which they themselves base their conclusions.

Senator BUTLER. Do you think it would be a good idea for this committee to ask the Treasury for a copy of that?

Mr. STRACKBEIN. I think it would be a good idea. I made that request before the Ways and Means Committee. I sought to enlist the assistance of the chairman to gain access to the report, but my request was not granted.

Senator BUTLER. The Ways and Means Committee did not have it either?

Mr. STRACKBEIN. They do have copies, I understand.

Senator BUTLER. The Ways and Means Committee?

Mr. STRACKBEIN. Copies have been made available to members of the Ways and Means Committee and to the Appropriations Committee. I am not sure that the report was made available to the Finance Committee of the Senate.

Mr. Chairman, with the suggested changes and comments, my organization has no objection whatsoever to a customs simplification bill.

Senator KERR. Subject to these suggestions, you recommend approval?

Mr. STRACKBEIN. I beg your pardon?

Senator KERR. I say, subject to these suggestions you recommend its approval?

Mr. STRACKBEIN. That is correct.

Senator KERR. All right, Mr. Strackbein; we thank you for your appearance here.

Mr. STRACKBEIN. Thank you, sir.

Senator KERR. Mr. Richard H. Anthony. Mr. Anthony, you may identify yourself; be seated and give your statement.

STATEMENT OF RICHARD H. ANTHONY, SECRETARY, THE AMERICAN TARIFF LEAGUE

Mr. ANTHONY. My name is Richard H. Anthony, and I am secretary of the American Tariff League, with headquarters in New York City.

I have a prepared statement, the early part of which I would like to read, and the latter part of which I would appreciate having inserted in the record at the indicated point.

Senator KERR. It may be done if you will give it to the reporter.

Mr. ANTHONY. The American Tariff League favors such changes in the customs administration law as will produce true simplification and efficiency in operation. The league would not be expected initially to propose such changes as it has no immediate, day-to-day experience with customs operations as have importing groups. The league's interest in any customs legislation centers in its possible effect on Government tariff policy.

The league wishes to express its views on certain sections of the bill. As to other sections, not specifically discussed, the league, in general, offers no objections.

SECTION 2. ANTIDUMPING AND COUNTERVAILING DUTIES

Our concern over this section is because of its interrelationship with section 13, in which primary reliance in valuation for customs purposes is now to be placed on the export value of imported merchandise, which is the market value or the price of that merchandise for exportation to the United States. As will be seen, the league approves of this change. However, while solving one problem, it creates another.

The unit price for exportation to the United States of any particular shipment of goods is not necessarily identical with the export price of such goods to other countries than the United States or to the fair value thereof in the domestic market of the exporting country. Primary reliance on export value exposes the stability of the United States domestic market to abuse. Specifically, a shipment to the United States may be undervalued for customs purposes or may benefit from an export subsidy, yet may slip through at regular duty rates, or free of duty, because the appraiser no longer would be required to consider its foreign value. The only protection from such abuse lies in the provisions of our laws against dumping and against subsidies.

Section 2 proposes to amend section 303 of the Tariff Act of 1930, so that the procedures leading to the imposition of a countervailing duty will be broadly the same as those required in the Antidumping Act of 1921. Instead of requiring the imposition of a countervailing duty upon the mere finding that an imported article has the benefit of a foreign export subsidy, as at present, section 2 would prevent such action unless the Secretary of the Treasury also determines that an American industry is being, or is likely to be, injured, or is prevented or retarded from being established.

The league can find no justification for thus weakening the countervailing duty procedures. According to the table entitled, "Analysis of Legislative Proposals Contained in H. R. 1535," the predecessor of this bill, inserted by the Treasury Department on pages 77 and 78 of the published hearings thereon in the House, the proposed changes requiring evidence of injury in both the dumping and countervailing duty cases originated in the abandoned Habana Charter for an International Trade Organization (art. 34, pars. 4, 5, 6) and in the General Agreement on Tariffs and Trade (art. VI, pars. 3, 4, 5). According to the analysis, they were not recommended by the McKinsey survey nor initiated by the United States Treasury Department.

Senator BUTLER. At that point, apparently from that remark you are familiar with the McKinsey report of the Treasury.

Mr. ANTHONY. Well, as the previous witness said, none of us on the outside has had any access to that report, so that while I am familiar with the tabulated findings, as revealed by the Treasury Department, none of us have ever seen the actual report.

Senator BUTLER. I think, Mr. Chairman, it might be a good idea for the chairman of the committee to request a copy of that for the members of the committee. I understand the House committee members were provided with copies, and I think we should be.

Senator KERR. We will discuss that.

Mr. ANTHONY. The Treasury might well hesitate to recommend provisions that would make the countervailing duty procedures less likely to be invoked, inasmuch as it would be proposing a reduction in potential Federal revenue.

The Treasury has declared that the major purpose of this bill is to simplify customs administrative procedures, and the contention is advanced that, if these totally different abuses, dumping and foreign-export subsidizing, are treated according to a single formula, simplification would follow. This may be true, but the league does not go along with the Treasury's suggestion of weakening the countervailing duty procedures. If any standardization of the two procedures is to be accomplished, it should be on the basis of tightening the provisions of the Antidumping Act, and keeping the countervailing duty procedures as they are in our present law, with the addition of the amendment suggested in this bill on page 2, lines 11 through end of the quote on line 15, whereby the use by foreign countries of multiple official currency rates of exchange is specifically included in the criteria of abuses for which countervailing duties may be imposed.

The Antidumping Act is a separate statute from the Tariff Act. It empowers the Secretary of the Treasury to investigate and find whether an American industry is being injured or threatened with injury, or is prevented from being established, by the dumping of foreign merchandise here, as defined in the act. The Secretary of the Treasury may make such investigation as he deems necessary and if he finds a case of dumping, he is required to make such finding public with as much detail or to the extent he deems necessary. Present law also provides for immediate precautionary action by the customs appraiser, if there is suspicion of dumping. If a case of dumping is found, there

is levied a special dumping duty in an amount equal to the difference between the sales price and the foreign market value, or in the absence of such value, then the cost of production in addition to the duty imposed by the Tariff Act, if any.

Section 13 of this bill eliminates, by omission, the "foreign value" basis as a measure or yardstick against which to assess an ad valorem duty on imported merchandise. The effect of this omission seems to deprive the Bureau of Customs of any current information on the "foreign value" of such imported goods. On the other hand, the Antidumping Act, which carries its own administrative provisions and definitions of terms, and which would still be in effect, requires that the customs authorities be kept informed on "foreign value" since that is the fair market value in the country of exportation, against which the export sales price to the United States is measured to determine if any dumping exists. No contradiction is involved, however, because the two laws have quite different purposes.

In the Antidumping Act, we are speaking of determining whether export sales to the United States are below fair market values abroad for suspected shipments, and in the Tariff Act we are speaking of values used as bases for the appraisement of all imports subject to ad valorem duties.

The Antidumping Act can be properly administered, without the necessity of maintaining the cumbersome procedures used now and in the past to obtain the information on "foreign value" for the purpose of general appraisal.

The league has studied this problem to determine whether there exists in international trade a well-established procedure which would assist our customs authorities in keeping posted currently on "foreign values," in a simple and inexpensive manner. The answer seems to come from Canada, where antidumping procedures are considered seriously and where action is taken automatically, whether there be the threat of injury or not. Canadian import regulations require that all exporters to Canada file, with every shipment, a form certifying the "fair market value" in the country of export of the merchandise under consideration when sold to the same category of purchaser.

Senator BUTLER. There is no such provision in the American customs?

Mr. ANTHONY. There is no such provision of that type.

Senator BUTLER. And you recommend that here?

Mr. ANTHONY. Yes, we do.

Known as Forms M and N, the declaration is not given under oath but is subject to the laws on perjury. This procedure has been followed in Canada for three-quarters of a century and is well understood by exporters to Canada the world over. It would cause little additional burden or expense to exporters to the United States of our customs administrative procedures required that exporters supply the same information to us as they are already required to supply to the Canadian customs authorities.

Our countervailing duty provisions, which date back to 1897, and the Antidumping Act of 1921 both stipulate that any investigations thereunder are to be made by the Secretary of the Treasury. These laws were enacted prior to 1922, when the role of the United States Tariff Commission was enlarged from that of a Federal fact-tabulating body to that of a fact-finding body charged also with making recommendations for action. The Tariff Commission is staffed by experts whose functions call for the continuous study of the economic effects of imports on domestic production. The countervailing duty and the antidumping investigations are the only investigations which are not made by the Tariff Commission under our present tariff laws. In the interest of economy and simplification, Congress should empower the Tariff Commission to make the investigations and recommendations required under the Antidumping Act and the countervailing duty provisions of the Tariff Act. These investigations are not properly customs procedures, but seem to fall within the purposes for which the powers of the Tariff Commission have been broadened since 1922. In accordance with its statutory responsibilities, the Tariff Commission should make such reports available to the President, to the House Committee on Ways and Means, and to the Senate Committee on Finance.

Senator BUTLER. Do you make any exact proposal that you want put in, in this House bill to accomplish that purpose?

Mr. ANTHONY. Well, we propose that the Tariff Commission be substituted for the Secretary of the Treasury in both the antidumping and the countervailing duty provisions, the two acts, and that could be done within this bill in section 2.

Our suggestions on this point were formulated some time back, and on the first day of these hearings, the Secretary of the Treasury, or his representative here, said that they had been discussing this matter with the Tariff Commission and had come to an agreement that the Tariff Commission could take over a portion of the investigatory procedures under these two acts.

We welcome that more as indicating that the two agencies involved believed that it could be done, but I think that I ought to explain to the committee that our proposal goes beyond that made by the Treasury.

The Treasury proposal is that the Tariff Commission investigate only the domestic injury element in the Antidumping Act as it is today, and also in the case of countervailing duties, provided this bill passes, with the injury test added to the coutervailing duty provisions, although we feel that it should not be added.

We go beyond that proposal and ask that the Tariff Commission also make the investigation of the actual dumping case after it has been brought to their attention, and of any subsidy that would seem to demand remedy by way of a countervailing duty.

SECTION 3. SPECIAL MARKETING REQUIREMENTS

If the Committee on Finance reports favorably on this section, which eliminates various special marking provisions existing in the commodity schedules of the Tariff Act, we urge that the committee make it clear, in its report, that the purpose in so doing is simplification of administration, but that the committee attaches considerable importance to the strict enforcement of the basic marking requirements contained in section 304 of the Tariff Act of 1930, as amended.

SECTION 11. ADMINISTRATIVE EXEMPTIONS

Fears have been expressed by retail groups and some domestic producers that the exemption of $10 shipments from tariff duties, allowed under section 11, may foster foreign mail-order business to the detriment of domestic trade channels. The provision for permissive action by the Secretary of the Treasury to prevent abuses does not quiet these fears. The league's position is that the traiff should be administered equitably so that neither the domestic producer, wholesaler, nor retailer is discriminated against. We urge that proper safeguards be included in the exemption, which many league numbers believe is too broad as it now appears in the bill.

SECTION 13. VALUE

The league's views on this section are confined to two provisions: (1) the inclusion of "comparative value" among the bases of valuation for customs purposes; and (2) the elimination, from the value of imported merchandise, of internal taxes imposed in the country of origin or exportation.

Comparative value: Section 13 of the bill changes the present law governing valuation of imported merchandise for the purpose of assessing ad valorem duties thereon, in two ways:

1. It eliminates the first basis, "foreign value," and hence the necessity of determining whether "foreign value" or "export value" is the higher. The league has no objection to this change, subject to the recommendations we have already made in discussing section 2 of the bill.

2. It introduces an entirely new basis, "comparative value," to be applied if the appraiser cannot ascertain satisfactorily either the "export value" or the "United States value," both of which are retained as in the present law, with some of their terms redefined. The league believes that the introduction of "comparative value" is unnecessary and undesirable, and that it should be eliminated from the bill.

The creation of "comparative value" is a step toward simplification of customs procedures only in the sense that it means abandoning strict standards of appraisal if they prove difficult or irksome to apply.

Senator KERR. Do you have an opinion as to why the creation of comparative value is undertaken in the bill?

Mr. ANTHONY. Well, I have an opinion that it would permit the appraiser to disregard some of the stricter standards and, therefore——

Senator KERR. I understand you to say that. The question I asked you is, Did you have an opinion as to the motivating reason for the inclusion in the bill of the provision.

Mr. ANTHONY. I think many importers would like to see the provisions governing valuation changed in such a way that virtually the invoice value would always be taken, and that very little investigation of the values as now defined in the bill will occur. It certainly would——

Senator KERR. Then what you are saying is that the purpose is to make it easier to import foreign products into this country?

Mr. ANTHONY. And undoubtedly at a lower level of protection, assuming the same rates of duty apply.

Senator KERR. Yes.

Senator BUTLER. One purpose, too, is apparently for the simplification of administration at this end of the line.

Mr. ANTHONY. I am sorry, Senator Butler, I did not hear that.

Senator BUTLER. It would simplify the administrative problems here.

Senator KERR. He attacks that in the statement.

Mr. ANTHONY. It would simplify——

Senator KERR. He says it would be a false simplification.

Mr. ANTHONY. Yes.

Senator BUTLER. You think it is too much simplification?

Mr. ANTHONY. Yes; I mean, simplification is fine if it serves a useful purpose, but if it simply means letting the bars down and giving a man an easy way of administering the functions in the bill that is false simplification in our view.

We must suppose that Congress wishes to protect the revenue and maintain the protective level of duties established under congressional authority. Hence, high standards of valuation procedure should be maintained.

The language of "comparative value," which permits the appraiser to attempt to ascertain or to estimate the value of the merchandise under appraisal by considering other types of merchandise, opens an entirely new field of appraisal procedure. This new yardstick is so loosely and vaguely defined as to invite frequent recourse to the courts for interpretation. It permits customs officials to exercise an indeterminable range of discretionary judgment and therefore appears to lead to the adoption of arbitrary or fictitious values, which may even withstand court scrutiny because of the lack of clear criteria.

It is reasonable to ask Congress to make the work of customs appraisers less onerous, providing the revenue is protected and continuity of approach maintained, so that importers and domestic producers alike will know where they stand from day to day. The league fears that "comparative value," while it may ease the burdens of appraisers, will induce capricious decisions and, in the long run, will so demoralize appraisal procedures that loss of revenue and lowering of the level of protection on imports will follow.

The relatively few cases which cannot be applied against "export value" or "United States value" can then be approached under "constructed value." In the rare case of a shipment so difficult of appraisal that it cannot be matched against any of these three bases

of valuation then, and only then, as in similar situations now and in the past, the appraiser can fall back upon his general authority under csetion 500 of the Tariff Act of 1930, where he has the privilege of—

ascertaining or estimating the value thereof by all reasonable ways and means in his power—

and so forth.

Taxes: This provision appears as paragraph (g) on page 22, lines 9 through 14. The language used is practically identical to that in article 35, paragraph 4 of the defunct Habana Charter for an International Trade Organization, and with article VII, paragraph 3, of the General Agreement on Tariffs and Trade. It provides that the value of imported merchandise shall not include the amount of any internal tax, applied within the country of origin or exportation, from which the imported merchandise has been exempted or has been or will be relieved by means of refund.

What does "any internal tax" mean? All taxes in a foreign country are "internal taxes" in that country, and does not the word "any" imply "all" taxes? If this principle is carried out ad absurdum, would it not permit exported articles to land in our country exempt of all foreign taxes, while our domestic articles reach the consumer overloaded with taxes on profits, excise taxes, and others? Of course, this is a ridiculous construction, but the wording of this paragraph is so broad and imprecise that it appears to permit such a literal interpretation.

Moreover, the text of paragraph (g) has no place in section 13. According to the Treasury Department's testimony before the House committee, this question of inclusion or exclusion of foreign internal taxes refers only to problems connected with the determination of "foreign value." Since "foreign value" is eliminated by the section 13 proposals, inclusion of paragraph (g), Taxes, makes no sense whatsoever. "Export value," which becomes the primary basis of Customs valuation, is the price for export to the United States, from which price may be exempted all sorts of foreign internal taxes without the United States having any recourse in the situation, except through strengthened countervailing duty procedures, as we have recommended in connection with section 2. We strongly urge that the committee eliminate paragraph (g) from section 13.

SECTION 20. CONVERSION OF CURRENCY

The question of converting foreign currencies into their equivalent value in United States dollars for Customs purposes arises from the fact that our tariff law requires that ad valorem duty rates be applied against the value of the imported merchandise, expressed in our national currency.

The proposition in section 20 is to repeal article 25 of the act of 1894, as amended, and to amend section 522 of the Tariff Act of 1930.

In article 25 of the act of 1894, Congress charged the Secretary of the Treasury with the administration of a part of one of the powers vested in Congress by the United States Constitution in article I, section 8, the power to regulate the value of our national monetary unit or coin and that of foreign coin. The United States dollar value of

foreign currencies was obtained by calculating the ratio of the fine gold content of foreign coin to the gold content of the dollar. These relative values corresponded closely to values effective for commercial transactions, and they were used for customs purposes. Section 522 of the Tariff Act is the section entitled "Conversion of Currency," which ties the procedures under section 25 of the act of 1894 into the Customs administrative provisions of the Tariff Act.

The League feels that the testimony of Treasury Department representatives before the House committee was somewhat misleading. The witnesses seemed to speak of a situation that may have been temporarily true at the time of the conferences related to the creation of GATT and with the proposed Habana Charter for ITO in 1947–48, but which certainly is not true today.

The requirement that the members or contracting parties to GATT tie the conversion of their currency to the par values established by the International Monetary Fund, a specialized agency of the United Nations, is to be found in article 35, paragraph 5 of the Habana Charter for ITO, and in article VII, paragraph 4 of GATT. ITO was also to have become a specialized agency of the U. N. There may have been some logic in providing for the interplay of all the specialized agencies of the U. N. when their roles crossed one another. The League has expressed its opposition to the forms of international economic planning proposed in the Habana Charter. That charter is now dead and, with it, the reasons for trying to bring the IMA into our domestic customs administrative procedures.

Article 25 of the act of 1894, was amended by section 403 of the Emergency Tariff Act of 1921, in a way that recognized that, after World War I, some countries were not adhering to the gold-content conversion basis in their current international commercial transactions. The amendment provided that, where the Secretary has not proclaimed a conversion rate or where the proclaimed rate varies by 5 percent or more from the buying rate in New York on the day of exportation, the buying rate is to be used for assessment of customs duties.

In 1934 the United States changed the gold content of the dollar so that it took $35 to purchase 1 troy ounce instead of $20.67 previously, and made it illegal for American citizens to hold gold in any monetary form. The Treasury and the Mint had no difficulty thereafter in adjusting the conversion rate of foreign currencies or coins to United States dollars and the Secretary continued to issue the proclaimed rates. While the citizen no longer could obtain gold for his currency or silver coin, there was still a definite, fixed gold content to the dollar, albeit a smaller amount than before.

Reduction of the gold content of their monetary units is exactly what a large number of foreign countries have effected since World War II. We believe that the repeated statement of the Treasury representatives at the House hearings that the gold-coin standard has been abandoned by most countries, misleads the layman into believing that the gold content of foreign moneys has been largely abandoned. It certainly is not true in international balance of payment settlements.

The International Monetary Fund has had nothing to do with these declarations of gold content of foreign monetary units, except to recognize them as a fait accompli. In fact, through no fault of its own, the IMF has never been able to perform its function, which is to stabilize currency values and keep them stable. Under these circumstances it seems at least premature to suggest changing our existing laws so as to base our currency-conversion procedures on IMF determinations.

In the case of those countries which use multiple official rates of exchange, whether or not they are attached to gold, we agree with the expressed opinion of the Treasury Department that we can continue to operate under present law, as interpreted by the Supreme Court in the case of *Barr* v. *United States* (324 U. S. 83 (1945)).

We see no justification for doing away with our present practices. The question of conversion of currencies is an important one in customs administrative procedures, and we consider it essential to strive to keep all elements entering into the determination of tariff duties within the control of the customs administration in the United States. Secion 20 should be eliminated.

To document our belief that present laws permit realistic conversion of foreign currencies into United States dollars, we submit a supplementary statement entitled "Conversion of Foreign Currencies Under United States Laws," and respectfully request that it be made a part of the printed record at this point in my testimony.

Senator KERR. It may be done.

(The document referred to is as follows:)

CONVERSION OF FOREIGN CURRENCIES UNDER UNITED STATES LAWS

(Prepared by the American Tariff League)

The Constitution provides in article I, section 8, that Congress shall have the power "to coin money, regulate the value thereof, and of foreign coin."

Article 25 of the act of 1894 stipulates that the Director of the Mint estimate quarterly the values of the standard coins in circulation of the various nations of the world. That value is to be expressed in the money of account of the United States as the pure metal content of such coin of standard value. The Director of the Mint's findings are to be proclaimed by the Secretary of the Treasury quarterly on the first day of January, April, July, and October in each year. This provision is incorporated as section 403 (a) of the Emergency Tariff Act of 1921 and reiterated in section 522 (a) of the Tariff Act of 1930, as amended.

In section 403 (b) of the Emergency Tariff Act of 1921, reiterated as section 522 (b) of the Tariff Act of 1930, as amended, it is ordered that for the purpose of assessment and collection of duties upon merchandise imported into the United States, wherever it is necessary to convert foreign currency into currency of the United States, such conversion shall be made at the values proclaimed by the Secretary, except as provided in subdivision (c).

Section 403 (c) of the Emergency Tariff Act of 1921, reiterated in section 522 (c) of the Tariff Act of 1930, provides that when no value is proclaimed by the Secretary or that such proclaimed value varies by 5 percent or more from a value established by the cable buying rate for the foreign currency, as determined by the New York Federal Reserve Bank, at noon of the day of export and certified daily to the Secretary, who shall make it public at his discretion, then conversion will be made at the determined value.

On page 32 of the published hearings on H. R. 1535 before the House Committee on Ways and Means (82d Cong., 1st sess.), the Treasury Department inserted,

as an example, an exhibit A entitled "Par values of foreign currencies published and kept current by the Secretary of the Treasury pursuant to section 522 (a) and (d), Tariff Act of 1930, as amended," on the assumption that section 20 of the Customs Simplification Act was in effect. The conversion rates are given in United States cents per foreign currency unit.

We find that the par values given are, in reality, obtained by dividing the official weight in grams of fine gold in the foreign currency by the weight in grams of fine gold in the United States dollar (0.888671 gram). An example is given in exhibit I, attached.

We have check this list in exhibit A and find that every country listed has officially expressed the value of its national currency in terms of weight of fine gold content. We attach exhibit II, a tabulation of the official declarations of gold content for the currency units of each of the countries listed in the Treasury Department's exhibit A, to which we have added declarations made since the date of those hearings, by Ceylon and Sweden, and a change in the gold content by Yugoslavia.

Exhibit B on page 33 of the published hearings before the House committee shows that the commercial rates for these countries, which have declared the gold content of their monetary units, very closely follow the official dollar cross rate. Under our present law, no other rate would be used for customs purposes unless the commercial rate determined by the Federal Reserve Bank of New York varied by 5 percent or more from the par value.

It must not be forgotten that some countries which are not members of the International Monetary Fund have or might declare the gold content of their monetary unit and there is no reason why their declarations should be ignored.

EXHIBIT I

Gold content of United States dollar expressed in grams

In 1934, the gold content of the United States dollar was reduced from 25.8 grains nine-tenths fine to 15.2381 grains nine-tenths fine.

15.2381 grains nine-tenths fine=13.71429 grains fine gold.
1 grain=0.0647989 gram.
13.71429 grains=0.888671 gram.
Fine gold content of United States dollar=0.888671 gram.

Examples of conversion rates:

(*a*) How many United States dollars in one United Kingdom pound sterling?
Fine gold content of United Kingdom pound sterling (see exhibit II) : 2.48828 grams.
Fine gold content of United States dollar : 0.888671 gram (2.48828÷0.888671=2.8).
Par value conversion rate : £1=$2.80.

(*b*) How many Belgian francs in one United States dollar?
Fine gold content of United States dollar : 0.888671 gram.
Fine gold content of Belgian franc (see exhibit II) : 0.0177734 gram (0.888671÷0.0177734=50).
Par value conversion rate : Belgian francs 50=$1.00.

EXHIBIT II

Gold content and par values in United States cents of foreign currencies listed in exhibit A entered on p. 32 of published hearings on H. R. 1535 before the House Committee on Ways and Means, 1st sess., 82d Cong.

[Official fine gold content of United States dollar in grams: 0.888671 (see exhibit I)]

Country	Currency unit	Grams fine gold per currency unit	United States cents per currency unit
Australia	Pound	1.99062	224.0000
Belgium	Franc	.0177734	2.0000
Bolivia	Boliviano	.0148112	1.66667
Brazil	Cruzeiro	.0480363	5.40541
Ceylon	Rupee	.186621	21.0000
Chile	Peso	.0286668	3.22581
Colombia	do	.455733	51.2825
Costa Rica	Colon	.158267	17.8094
Cuba	Peso	.888671	100.0000
Czechoslovakia	Koruna	.0177734	2.0000
Denmark	Krone	.128660	14.4778
Dominican Republic	Peso	.888671	100.0000
Ecuador	Sucre	.0592447	6.66667
Egypt	Pound	2.55187	287.1560
El Salvador	Colon	.355468	40.0000
Ethiopia	Dollar	.357691	40.2500
Finland	Markka	.00386679	.434783
Guatamala	Quetzal	.888671	100.000
Honduras	Lempira	.444335	50.0000
Iceland	Krona	.545676	6.14036
India	Rupee	.186621	21.0000
Iran	Rial	.0275557	3.10078
Iraq	Dinar	2.48828	280.0000
Lebanon	Pound	.405512	45.63130
Luxemburg	Franc	.0177734	2.0000
Mexico	Peso	.102737	11.5607
Netherlands	Guilder	.233861	26.3258
Nicaragua	Cordoba	.177734	20.0000
Norway	Krone	.124414	14.0000
Pakistan	Rupee	.268601	30.2250
Panama	Balboa	.888671	100.0000
Paraguay	Guarani	.148112	16.6667
Philippines	Peso	.444335	50.0000
Sweden	Krona	.171783	19.3304
Syria	Pound	.405512	45.63130
Turkey	Lira	.317382	35.7143
Union of South Africa	Pound	2.48828	280.0000
United Kingdom	do	2.48828	280.0000
Venezuela	Bolivar	.265275	29.8507
Yugoslavia	Dinar (devalued Dec. 28, 1951).	.00296224	.333333
NON METROPOLITAN AREAS			
Belgian Congo	Franc	.0177734	2.0000
French possessions—India	Rupee	.186621	21.0000
French Somaliland	Djibouti franc	.00414507	.466435
Hong Kong	Dollar	.155517	17.5000
Netherlands Antilles	Guilder	.471230	53.0264
Netherlands Surinam	do	.471230	53.0264
United Kingdom Barbados, British Guiana, Trinidad.	BWI dollar	.518391	58.3333
British Honduras	Dollar	.622070	70.0000
British North Borneo, Malaya, Sarawak	do	.290299	32.6667
Fiji	Pound	2.24169	252.2520
Gambia, Gold Coast, Nigeria, Sierra Leone, Northern Rhodesia, Nyasaland, Southern Rhodesia, Bahamas, Bermuda, Cyprus, Falkland Islands, Gibralter, Jamaica, Malta.	do	2.48828	280.0000
Kenya, Tanganyika, Uganda, Zanzibar	E. African shilling	.124414	14.0000
Mauritius, Seychelles	Rupee	.186621	21.0000
Tonga	Pound	1.99062	224.0000

NOTE.—Italicized countries are new countries added since publication of exhibit A or countries which have changed gold content of their monetary unit since that time.

Mr. ANTHONY. H. R. 5505 contains, as section 24, the now familiar GATT caveat referred to by the previous witness which declares that—

enactment of this act shall not be construed to determine or indicate the approval or disapproval by the Congress of the Executive agreement known as the general agreement on tariffs and trade,

and we hope it will appear in any final enactment of this bill.

However, the caveat, important though it is, does not come to grips with GATT itself. Before we become more than ever entangled in commitments made on behalf of the United States, but without express congressional approval or review, we urge Congress, as soon as possible, to take such action as will clarify our situation and make us stand forthright in the eyes of the world. As to those principles and provisions of GATT which all of us can approve, can we not say so by the constitutional process of treaty ratification after congressional hearing and debate? As to those to which we do not wish to be committed, should we not repudiate them as soon as possible and thus clear ourselves of these unfounded charges that we are going back on our word?

Senator KERR. Thank you, Mr. Anthony. Are there any questions? Thank you, Mr. Anthony.

Mr. ANTHONY. Thank you, sir.

Senator KERR. Mr. J. Bradley Colburn. Sit right down.

Mr. COLBURN. All right, sir.

STATEMENT OF J. BRADLEY COLBURN, ASSOCIATION OF THE CUSTOMS BAR

Mr. COLBURN. Mr. Chairman, I have a prepared statement which I would ask permission to file and have reproduced in the record.

Senator KERR. All right, sir.

Mr. COLBURN. And I would like to confine my oral presentation to high lighting that statement, and adding a few additional comments.

Senator KERR. All right.

Mr. COLBURN. I appear here on behalf of the Association of the Customs Bar, which is composed of lawyers throughout the United States who specialize in the practice of customs law.

The statement which has been prepared has been submitted to the members of that association, and represents a composite of their views on this bill.

We have endeavored to confine our comments to the question of the bearing of the proposed changes on the question of judicial review. We have sought to eliminate, so far as possible, any politico-economic considerations.

Senator KERR. You are interested in its administration and not its construction?

Mr. COLBURN. That is right, sir.

Senator KERR. All right.

Mr. COLBURN. We note that it has been stated in the prior hearings before the Committee on Ways and Means by the representatives of the Treasury Department and others that the proposed bill would

not diminish or impair judicial review, as always provided by the Congress in customs matters.

Nevertheless, the bar association feels that some of the provisions of this bill are so vague and so general and sweeping in the language used as to raise at least serious doubts as to whether judicial review would be continued and maintained in historic fashion.

Senator BUTLER. Do you cover those points?

Mr. COLBURN. Those are covered in the presentation, and in each instance, may I say, where we criticize and ask for an amendment we have submitted appropriate language to accomplish that result.

I would like to address myself primarily to the several provisions which seem to be most in dispute, gathered from the comments of the witnesses who have appeared before you, namely, sections dealing with value, section 13, the section dealing with the amendment of entries and undervaluation, section 17, the currency-conversion section, No. 20, and I have added an additional general comment which is not covered in the bill at all, which I, however, think should be considered by the committee, namely, the possible effect on this bill, the question of judicial review of the reorganization plan with respect to the Treasury Department generally that was adopted in 1950.

Now, section 13, as the committee is aware and familiar with the proposals under that, we do not quarrel particularly with the proposed elimination of foreign value. We regard that as a politico-economic question.

Necessarily, of course, the elimination of that basis of value would in a number of instances automatically reduce the amount of duties colle ted by the United States. But if the committee and the Congress, having that in mind, consider that the elimination of foreign value is going to lead into simplification, reduce expenses generally, from a legal standpoint we see no reason to question it.

We do, however, question the use of a new comparative value.

Senator KERR. Say that again.

Mr. COLBURN. The elimination of foreign value would, of course, make export value automatically the primary base to be used by appraising officers.

That is substantially changed in the present law. The definitions of "freely offered" and the statement of various restrictions on sales are attempted to be set forth so as to broaden the application of export value from that which obtains under present law.

We have no particular comments on those, nor on the changes made with the alternative basis of United States value.

However, the bill would propose the interjection as a third alternative basis of a new so-called comparative value. We quarrel quite seriously with that because we think the language is so vague and indefinite and sweeping in character that we are not sure, as lawyers specializing in this practice, that we are going to have a fair review in court if we have occasion to object to an appraiser's finding under that section.

It has been said that the purpose of it is to appraise a 10-inch dinner plate on the basis of an 8-inch dinner plate or to determine the value of a 3-drawer cabinet on the basis of the value of a 4-drawer cabinet. I think those are some of the illustrations that have been used by the Treasury.

Senator KERR. Would you say that it is reasonable to take the position that the basis of the import duty, being value fixed according to some formula, that any relationship between values of articles based on differences of dimensions would be purely coincidental?

Mr. COLBURN. I should say so; yes.

Now, one of the witnesses yesterday suggested, and with which observation I must agree, that it would be possible under this bill to arrive at the value of an article of chinaware using an article of earthenware. You can go most any length. There is no line drawn here; there is no real yardstick laid down to govern the action of the appraiser.

Senator KERR. What you are saying is that the proposed method would prevent an accurate appraisal of value rather than contribute to it.

Mr. COLBURN. I think it might well lead to that result, Senator. Certainly, I suggest it would invite bypassing or short-cutting the export and United States value bases and jumping to the comparative value and coming to an arbitrary decision thereunder.

Senator KERR. Which of itself would be another way of saying that it would prevent arriving at an accurate appraisal of real value.

Mr. COLBURN. We believe that is so. Therefore, we think that section is bad.

Now, outside of the express provisions of the bill if true simplification is to be achieved, and importers and those engaged in foreign trade generally are to know where they stand, it seems to us that a provision should be inserted to require the appraiser, when taking action, to state the basis of his action. That requirement was at one time found in customs regulations, and involved, as far as we have ever been aware of, no great trouble or difficulty. It has now been eliminated. It is done by some appraisers at ports throughout the country here and there, but there is no standard or regular practice.

We believe it should be made a requirement of law so that whichever of the bases provided by law shall be adopted by the appraiser, the importer or other person concerned may know just what value was being used, and challenging it if he cares to do so.

We also believe that there should be attached to this bill some time limit on appraisement action.

We have today, and have had for a number of years, the situation where appraisements are delayed for years and years and years.

Senator KERR. The suggestion here yesterday by a number of witnesses was 120 days.

Mr. COLBURN. We endorse and concur in that recommendation, and the bar association has drafted an amendment which would effectuate that idea.

Senator KERR. And you introduce that here?

Mr. COLBURN. And that is a part of my prepared statement. We suggest, therefore, that consideration be given to that.

Now, on section 17, dealing with the amendment of entries and undervaluation, the bill would do away entirely with the existing right of importers to amend their entries.

Now, it is my understanding that the representatives of the Treasury Department have justified that elimination on the ground that the bill would do away with the present requirement that duties must be

based on the entered or appraised values, whichever is higher; and, therefore, that the importer no longer needs to amend his entry. He is going to get the benefit of the proper or lower value if that be the proper value in any event.

Senator KERR. Would the effect of it be that the fellow who buys it and pays for it would have no position in the matter of declaring its value either on the basis of the information he had when he first received it or which he might later acquire but that, on the other hand, he would be subject to any number of changes that might be effectuated by others who would be permitted to amend or change their idea of what the value was or might be?

Mr. COLBURN. He would be permitted, of course, and required at the time of original entry of his merchandise to declare a value based on the information then in his possession.

Senator KERR. By which he would be bound, but which would not be determinative of the actual result.

Mr. COLBURN. That is right.

Then we think a situation might arise where, as a result of honest differences of opinion between the appraiser and the importer or, perhaps, which unfortunately happens sometimes, because of personal differences or animosity, the appraiser might take the position that the importer has not cooperated to the extent of filing all of the information that this proposal would require him to file, and thereby subject him—make a finding which would result in subjecting the importer to additional duties for alleged undervaluation.

That situation could be obviated if the importer had the right to amend, and we think that should be restored.

Now, also there is a provision proposed to be inserted here to which the bar association is opposed, that, namely, in case an appraiser reports an importer as not cooperating by furnishing information, and which was the basis for the imposition of duties for undervaluation, the matter should then——

Senator KERR. Duties or penalties?

Mr. COLBURN. It is a penalty—well, it is 1 percent for each percentage.

Senator KERR. It is the imposition of a penalty, is it not?

Mr. COLBURN. It is a penalty, in fact. It would then be reviewed by the collector of customs.

We think that is the creation of another administrative review forum. The collector of customs and the appraisers of customs are supposed to be coordinate officers. We do not think it is good practice to subject the determination of values by the appraiser to review by the collectors, nor do we favor the idea of creating another administrative court, so to speak. We believe they should go in case of dissatisfaction with the findings of the appraiser directly to the Customs Court created for that purpose.

We have, therefore, suggested an amendment to take care of that situation.

Again, the right of importers to get notices of appraisement action would, under this proposed bill, be subjected to the discretion of the collector and the requirement that the importer must show a substantial reason or reasons for requesting a notice of appraisement. We think that that smacks of the arbitrary, and the importer should

get it if he requests it, without justifying that on any basis of substantial reason to the collector or any other officer.

These, and other matters, seem to us to introduce so many doubts into the established fabric of customs administrative procedure that we suggest a safeguarding amendment to existing section 501 of the tariff act to make certain that if despite our criticisms and those that others have advanced, the bill be enacted in substantially unchanged form, that then this amendment to section 501 be made to make sure that nevertheless an importer can obtain redress in established court procedures.

Currency conversion, taking up that proposal, that would change very radically the existing procedure. It would do away with the ascertainment of Mint pars based on gold values entirely, and substitute as the primary basis for conversion of foreign currencies the par values established pursuant to the International Monetary Fund.

While that is, perhaps, more of a politico-economic question than a legal one, we are sure the committee will have in mind the policy question of whether we desire to place in the hands of an international organization the final determination of values which are going to be applied in fixing dutiable values in the administration of a purely local or United States statute.

Senator KERR. To a limited extent that surrenders the prerogative of our own exclusive agent to determine the comparative value of our money——

Mr. COLBURN. It does, Senator.

Senator KERR (continuing). Over to another agency with reference to which we are but one of many who would control it.

Mr. COLBURN. That is much better stated than I could, sir.

Senator KERR. Is that what the situation is as you see it?

Mr. COLBURN. That is right; it is.

One of the worst features of this proposal, whether or not the International Monetary Fund be agreed to, however, seems to us to be the proposed delegation of determination of values of currency to some international agreement to which the United States may become a party at some time in the future.

If I would be permitted to guess, I suppose that is a remnant from the structure of this proposal at the time the International Trade Organization was being talked about and was before the Congress.

It might make some sense or you could tie it to something definite if that proposal were still in existence. As it is, however, with that having been rejected and withdrawn, I, at least, know of no present proposed international organization or agreement to which the United States may become a party to which this would refer.

Senator KERR. Could this possibly be an attempt to resurrect the substance of that with reference to which the form and substance are both dead?

Mr. COLBURN. I shrewdly suspect it may be, sir.

In any event, I suggest that entirely apart from that, I respectfully suggest it is very bad policy and legislation to delegate away the powers of the Congress to some unnamed, unknown organization, particularly when it is of an international character where we, as a sovereign nation, would have only one voice of many.

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The currency provision would seem to recognize the present practice of certification of buying rates by the Federal Reserve bank, but would make the use of those buying rates which, after all, I suggest, fairly reflect the true value day to day of the moneys of the world that are used in foreign trade, would subject the use of them to the values established under the International Monetary Fund or this other unnamed organization, which was set forth and referred to in section 20. I suggest again that is bad practice. We believe that the Federal Reserve certification of rates should be the primary basis, and if the International Monetary Fund rates are to be adopted despite our criticism, that then there should be provision for use alternatively of the Federal Reserve bank if such rates varied by 5 percent or more from the standard that may be established.

Senator KERR. Do you think that the Federal Reserve rates published daily or from time to time have to be closely related to reality?

Mr. COLBURN. I do, sir.

Senator KERR. And that if there are other rates which differ, to the extent that they do differ, it would mean that they were unreal?

Mr. COLBURN. I think so.

Senator KERR. If the Federal Reserve rates are based on reality, then the other conclusion would have to be correct, would it not?

Mr. COLBURN. You achieve in one sense, I suppose, simplification when you adopt one rate instead of many, but you are doing that at the cost of adopting an unrealistic rate which, many times, is unrelated to the true value of the transaction.

Senator KERR. Do you make something simple only as you make it inaccurate?

Mr. COLBURN. I think so.

Senator MARTIN. Mr. Chairman, may I ask a question?

Senator KERR. Sure.

Senator MARTIN. Is there any way to make it realistic except through a stable currency based on gold or silver or some other commodity that has a real value?

Mr. COLBURN. Well, I am getting a little over my depth there, Senator.

Senator KERR. I wonder if I might rephrase that question? Let me see if I can rephrase that question.

Mr. COLBURN. I do not pose as an international monetary expert that is why I make that statement.

Senator KERR. Is there any way to make it accurate except on the basis of reality?

Mr. COLBURN. That, I can certainly endorse.

Senator MARTIN. That is what I am getting at. It is most difficult for legislators, the Congress of the United States, or in any of the countries of the world, to work out a currency so that you have real values unless it is based on something that has real value in the world.

Mr. COLBURN. That would certainly seem to be quite clear.

Senator KERR. That is reality, Senator. You are talking about reality.

Senator MARTIN. That is what I am talking about, reality, and we are going to be in an awful lot of trouble in trading throughout the world until we do get back down again to realities.

Mr. COLBURN. I think so, Senator.

Senator MARTIN. I do not think any of those things are difficult. I mean, we have never been able to do it in all the history of the world. We get into trouble, we get devaluated currency, and it is awfully hard to get an established value unless it is on a reality basis.

Senator KERR. It occurs to me that the simplest formula in the world is that of reality.

Senator MARTIN. That is right.

Senator KERR. And when you either actually depart from or attempt to depart from reality, rather than becoming more simple you become less simple.

Mr. COLBURN. You are quite right.

I would like to interject, if I may here, that one of the criticisms which has been expressed here of the use of the Federal Reserve rates has been that it requires frequently quite involved calculations because it has been the practice of that bank to certify rates extending out into many decimal places. That, I suggest, can be taken care of very readily by simply inserting in the revision of the law or in the present law the requirement that rates certified by the Federal Reserve shall be carried out only two decimal places, period.

Senator KERR. Well, you know that modern scientific development of mathematical formulas has fixed it so that problems may be solved pretty well by machines, even though they involve fractions or decimals out to more than two or three points.

Mr. COLBURN. Yes, Senator.

Senator KERR. I mean if they did not have them, I would be lost, but in view of the fact that such developments have taken place, I find that even one with a limited knowledge of mathematics that I have, can have access to accuracy.

Mr. COLBURN. I think that that is entirely correct; and we have one of those machines in my office, which I do not understand, but apparently many people do not have them and, therefore, they have to do it the hard way and have difficulty.

Senator KERR. I do not understand the radio, but I have not permitted my lack of understanding to cause me to deny myself the pleasure of using it.

Mr. COLBURN. Exactly.

Senator MARTIN. Mr. Chairman, of course, all these things—you take the economy that we have in America: in 200 years, 95 percent of the work is done by mechanical effort rather than muscular effort.

Senator KERR. These mathematical machines have made mathematical experts out of those who otherwise would be mediocre—I do not mean to say that refers to me, but I take great comfort from that knowledge.

Senator MARTIN. It is a very great comfort, Mr. Chairman, but these different mechanical means are just to take care of the detail end of it, but the great basic principles remain the same, whether it is muscular energy or whether it is mechanical energy, and to get a proper value we have got to get it on realities, and the only reality, as far as monetary systems are concerned, that has worked out entirely satisfactorily has to be to base it on a commodity like gold or silver or something of that kind.

Senator KERR. Do you have anything further, Mr. Colburn?

Mr. COLBURN. I have only one other observation, Senator, and that is as to the possible effect of the Reorganization Plan No. 26 of 1950, under which Congress approved the transfer to the Secretary of the Treasury of all functions of all other officers of the Treasury, and agents and employees of that Department.

That was approved by the Congress, so that technically, I assume, that all functions of all officers of the Department including those of collectors and appraisers of customs were vested in the hands of the Secretary.

Subsequently, he redelegated those functions back to the respective officers, agents, and employees, but it would seem that under the basic reorganization plan and law he can cancel that redelegation at any time, and repossess the powers which, if it came about, might seem to raise very serious questions of the exercise of discretionary powers and the effect of a possible judicial review.

Senator KERR. What you are saying is that any additional discretionary powers granted to the collector are actually an additional grant to the Treasury?

Mr. COLBURN. That is right. Therefore, we have suggested a sort of a basket clause provision which we ask to be inserted at the end of this bill to make certain that no such event shall transpire from the adoption of this measure.

Thank you very much.

Senator KERR. All right, Mr. Colburn, we thank you.

Mr. COLBURN. Thank you, sir.

(The prepared statement of Mr. Colburn is as follows:)

STATEMENT OF J. BRADLEY COLBURN, ON BEHALF OF ASSOCIATION OF THE CUSTOMS BAR, NEW YORK, N. Y., ON THE PROPOSED CUSTOMS SIMPLIFICATION ACT OF 1951 (H. R. 5505)

The Association of the Customs Bar is composed of lawyers who specialize primarily in the practice of customs law before the United States Customs Court, the Court of Customs and Patent Appeals, the United States Treasury Department, and other departments of the Government concerned with customs and tariff matters.

The customs bar is directly and vitally interested in and concerned with the proposed legislation. Copies of the proposed bill have been made available to all members of the association and the statement now presented represents their composite views and specialized experience.

The stated purpose of the bill is to simplify operation of the Tariff Act of 1930, as amended, to reduce expence and delay incident to the administration of that law, and to eliminate inequities which add to the difficulty of enforcement.

The proposed bill fails utterly to accomplish these objectives. Instead, it would do away with some of the safeguards which exist today for the protection of importers and traders; would vest broad discretionary and perhaps arbitrary powers in customs officials, and would, in some instances at least, abolish the historic right which Congress has provided for the customs field, that is, the right of aggrieved importers to seek and obtain judicial relief from arbitrary or erroneous administrative action in connection with every phase of importation into the United States.

The Association of the Customs Bar, for reasons which are hereinafter stated, is opposed to the bill in its present form. It recommends to the committee that the bill be rejected unless the necessary and clarifying amendments which we shall suggest be adopted. Such amendments relate to the following sections of the bill:

Section 5—Paragraph 1615 (f) Tariff Act of 1930—American Goods returned.
Section 13—Value.
Section 17—Amendment of entries and undervaluation.
Section 20—Conversion of currency.

A new general amendment is suggested to insure maintenance of complete judicial review and to preclude any possibility of diminution of such review by operation of Reorganization Plan No. 26 of 1950 (15 Federal Register 4935) and order of the Secretary of the Treasury No. 120 of July 31, 1950.

SECTION 5—PROPOSED AMENDMENT OF PARAGRAPH 1615 (F) TARIFF ACT OF 1930—AMERICAN GOODS RETURNED

The Treasury Department has stated that the proposed amendment to paragraph 1615 (f) is made in response to recommendations by McKinsey & Co. in a survey of the customs service by that firm of management consultants. The proposed amendment does not, however, go far enough and fails to carry out the following recommendations made by the McKinsey survey.

"We recommend the elimination of affidavits and evidence of exportation on entries of 'American goods returned' when, upon examination of the merchandise it can definitely be determined that such merchandise is of American manufacture, growth, or product."

Paragraph 1615 (h) of the Tariff Act of 1930, as amended by the Administrative Act of 1938, provides:

"(h) The allowance of total or partial exemption from duty under any provision of this paragraph shall be subject to such regulations as to proof of identity and compliance with the conditions of this paragraph as the Secretary of the Treasury may prescribe."

The administrative authorities and the courts have uniformly held that compliance with regulations prescribed by the Secretary of the Treasury under this provision is a condition precedent to the free entry of any merchandise under paragraph 1615. Relief from the payment of duties has been denied on the ground of noncompliance with the regulations even where complete documentary proof was submitted after liquidation. (See *United States* v. *Morris European and American Express Co.*, 3 Ct. Cust. Appls. 146.)

It has even been held that the fact that customs officials knew that the particular merchandise was of American origin and were familiar with all the facts connected with exportation and importation did not excuse the necessity for compliance with the regulations under the theory that the grant of free entry by the Congress in this paragraph was limited and the limitation must be strictly followed (*Maple Leaf Petroleum Ltd.* v. *United States*, 24 C. C. P. A. (Cust.) 5 T. D. 48976.

The determination of American origin of imported merchandise should in and of itself be sufficient to permit duty-free entry into the United States. The privilege of such free entry should not be qualified, limited, or made contingent upon the furnishing of affidavits and other documentary proof frequently difficult, if not impossible, for the importer to obtain in order to satisfy customs regulations. The importer should be free to establish the character of his merchandise and if dissatisfied with the findings of the collector as to its duty-free or dutiable status, should be permitted to have his rights established by court review just as in the case of any other merchandise sought to be brought into the United States.

For the foregoing reasons it is suggested that paragraph 1615 (h) of the Tariff Act of 1930, as amended, be repealed.

SECTION 13—VALUE

This section would amend section 402 of the Tariff Act of 1930 by eliminating entirely the use of foreign value as a basis of dutiable value. It would make "export value" the primary basis for payment of all ad valorem duties under the tariff act, with resort, if export value did not exist, to a United States value, then to a newly defined "comparative value" and finally to cost of production or as the bill terms it "constructed value." The elimination of foreign value as a basis of dutiable value is regarded as a matter of congressional policy on which the bar expresses no opinion.

If the new bases of dutiable value are to be adopted, however, a number of changes are necessary to prevent arbitrary administrative action and to preserve judicial review.

The proposed bill omits entirely subdivision (b) of section 402 of the existing Tariff Act of 1930, which provides that a decision of the appraiser that any basis of value cannot be satisfactorily ascertained shall be subject to review under reappraisement proceedings under section 501 of the Tariff Act of 1930 (U. S. C., title 28, ch. 169).

The United States Customs Court and the Court of Customs and Patent Appeals have, for many years, assumed jurisdiction and decided thousands of cases involving findings of the appraiser that one or the other bases of stated values did or did not exist. It has been stated by the sponsors of the bill that omission of this section would not affect or diminish this historic court review. If there be any doubt whatever on this score, section (b) of the present law should be reinstated.

There are a number of detailed objections to the definition of various bases of alternative values in their present suggested form. For example, appraising officers would be authorized to ascertain or estimate United States value or comparative value. An estimate may involve use of discretion and to that extent, at least, limit possible judicial review. There is no need for this added power to appraisers and the suggested definitions of value are completely workable without it. Accordingly, the words "or estimated' should be deleted at page 20, line 8, and page 20, lines 16 and 17. Similar amendments should be made by deleting the words "or estimated" on page 22, line 10; page 23, line 34; page 24, line 12; and page 24, line 19.

Further objections to section 13 go to the suggested new comparative value as a basis of dutiable value, to the absence of any provision for making known to importers the basis of appraisement action by customs officers and to the complete absence of any time limit on appraisements.

Comparative value.—Comparative value is defined to be the equivalent of export value as nearly as such equivalent may be ascertained or estimated on the basis of export or United States value of other merchandise from the same country, which is comparable in construction or use with the merchandise undergoing appraisement, with appropriate adjustments for differences in size, material, construction, texture, or other differences.

It would be difficult to find language vesting broader discretionary power in an administrative officer, and might well lead to wide abuses. Also, as long as no requirement exists for an appraising officer to set forth the official basis of his appraisement action, this wide open basket provision, or residual clause for comparative value, might constitute an open invitation to appraising officers to arbitrarily fix values on imported products with the extent of possible court review and correction considerably in doubt.

Requirement should be inserted to provide specifically that an appraiser shall disclose the basis of his appraisement in his return of value; that is, that he shall state on the face of the papers whether his findings of value is based upon export value, United States value, comparative value, or constructed value. Such a requirement would impose no hardship or additional work upon appraisers or other customs officers. It would simply mean that in putting down the figures of the value determined by the appraiser, he would add appropriate words to denote the basis thereof, as for example "export value." This is done by some appraising officers under existing practice and was formerly required by customs regulations,[1] by adding initials to denote the basis of value as for example "F. V.," meaning foreign value, and "U. S. V.," meaning United States value. Such practice is not uniform or general today in the absence of any requirement thereof, however, and as a consequence, an importer, if he desires to challenge the correctness of an appraised value, is wholly in the dark as to the starting point therefor.

It is recommended that a new provision be added at the end of section 13, page 24, following line 19, to the following effect: "No appraisement made under the provisions of this section shall be complete unless there be included in the return of value by an appraiser a statement of the basis on which such appraisement is made."

A most serious objection to section 13 as now presented is the lack of any provision therein for a time limit on appraisement. Under present law, an importer is required to wait months and even years before he is informed of the dutiable value of the merchandise imported by him. In the case of merchandise subject to ad valorem duties, he cannot know the possible limits of his ultimate duty liability until the appraisement has been made. Importers, through no fault of their own, have been frequently subjected to heavy losses by appraisers' increasing dutiable values of merchanidse entered by them long after the merchandise had entered consumption and had been disposed of. Many of the delays which have occurred, have, as has been pointed out, been due to the

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[1] Customs Regulations of 1937, art. 776 (t); C. R. of 1931, art. 778 (t).

difficulties of ascertaining a market value in the country of exportation; that is, a so-called foreign value. With removal of foreign value as a basis of dutiable value and the other changes in the proposed section 13 calculated to simplify the determination of proper dutiable value of imported merchandise, no reason would exist any longer for the interminable delays which now occur in obtaining appraisement action.

Importers generally desire certainty. That is, they want to know their outside possible liability by way of duty. A time limit of 120 days from the date of entry would give appraisers, under the proposed legislation, ample time in which to complete appraisal action.

It is therefore suggested that at the end of section 13 there be inserted a new section to provide substantially as follows:

PROPOSED AMENDMENT

"If the appraiser shall fail to complete his appraisement within one hundred and twenty days after the date of entry, the consignee or his agent may apply to any judge of the United States Customs Court for an order to show cause why the appraisement should not be completed. A copy of said order shall be served upon the Assistant Attorney General in Charge of Customs. On the return of the order, the judge before whom the same is returnable may, for good cause shown, issue an order to the appropriate customs officer directing the transmittal forthwith to said court of the entry and all accompanying papers and if the appraisement has not been completed, he may proceed to determine the value of the merchandise in accordance with the provisions of this section. The United States Customs Court is hereby given jurisdiction to take any and all acts necessary to effectuate the foregoing provision."

The proposed amendment affords the importer an opportunity to go before the United States Customs Court and prove a value if he is able to do so and if he feels the appraisement has been withheld without good cause. This avenue of litigation should not in any way weaken existing safeguards to the revenue. In the first place, the appraiser is given 120 days within which to act. Secondly, when this time is inadequate the Assistant Attorney General may oppose the order and establish that delay is requisite in order to find value. In the third place, the importer will not proceed unless he has in his possession evidence sufficient to establish a value. Even after the order has been signed, the Government could apply for time within which to gather the evidence which is necessary in order to put in an adequate opposition to a claimed value. Finally, between the time when the order is signed and the date when it is returnable, the appraiser could complete his appraisement at the highest value which in his judgment was consistent with accuracy and the importer would be left to his existing remedy of an appeal to reappraisement.

SECTION 17—AMENDMENT OF ENTRIES AND DUTIES ON UNDERVALUATION

The bill amends section 487 of the tariff act by deleting therefrom "or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisement." This amendment would eliminate the right granted by the present statute of amending entered values at any time before appraisement of the merchandise.

Such amendments to entries are necessary now in order to permit the importer to decrease his entered value where he knows the appraiser will appraise at a figure less than his original entered value and likewise, to save himself the burden of a penalty under section 489 where he knows the appraiser will advance his values.

By repeal of the requirement of section 503 that duty be based on the entered or final appraised value, whichever is higher, and the removal of penal duties for undervaluation under section 489 in all cases except where the importer has failed to cooperate fully with the appraiser, the necessity for amendments to entries will, in practically all cases, be eliminated. However, such right of amendment should be retained and should be available to an importer. We suggest the possible case of an importer who has cooperated to the best of his ability with the appraiser but feels that the appraiser intends to advance his values and to report to the collector that the importer has not fully cooperated. Such a situation may arise because of honest differences of opinion on the relevancy of facts, or on the law applicable, or some personal differences between the appraiser and the importer; in which case, the importer can protect himself from possible penalties under section 489 only by amending his entered values.

The desired result of eliminating paper work will be accomplished even though the amendment provision in section 487 be retained as amendments will be necessary in relatively few cases.

On page 28, line 4, it is believed that the word "required" should be changed to read "requested." To avoid arbitrary action, additional duties for undervaluations should not be applied unless an importer has refused to meet a reasonable request by an appraising officer for relevant information available to the importer.

On page 28, line 21, to page 29, line 9, a new proposal is inserted that the assessment of additional duties may be remitted or payment avoided by an administrative decision under section 515. No reason is seen why the collector of customs should be authorized to review a determination of a coordinate officer of the customs, i. e., the appraiser, on the question of whether an importer had complied with a request of the appraiser to supply him with information. This would mean the creation of an additional administrative forum and would add to and not subtract from the burdens upon administrative officers and importers. The rights of the importer would be amply protected if in any case in which he believes additional duties were wrongly assessed, his present right of petitioning the customs court directly be preserved and maintained.

It is accordingly suggested that the proposed subdivision (b) on page 28, lines 21 to 25, and page 29, lines 1 to 9 be amended to read as follows:

"Such special duty shall not be construed to be penal and shall not be remitted nor payment thereof in any way avoided except upon the finding of the United States States Customs Court upon a petition filed at any time before expiration of 60 days after liquidation, under such rules as the court may prescribe, that the entry of the merchandise at a less value than its final appraised value was without any culpable negligence or intention to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise."

Section 17, subdivision (c) at page 30 purports to amend section 501 of the Tariff Act of 1930, as amended, by adding a provision for the sending of appraisement notices to importers if such notice is requested in writing and requires page 30, lines 10 and 11 "a substantial reason or reasons for requesting the notice." This language subjects the right of an importer to receive notice of appraisement to a determination by customs officers whether the reasons given therefor were substantial in the judgment of such customs officers. An importer is entitled to a notice of appraisement in any event without a request and as a matter of right. It is therefore suggested that the words on page 30, lines 9 to 11 "setting forth a substantial reason or reasons for requesting the notice" be deleted.

The proposed changes and the definitions of dutiable value with respect to amendment of entries and additional duties for undervaluations as set forth in sections 13 and 17 of the bill now before the committee, are so revolutionary in character that very specific amendments should be made to section 501 of the Tariff Act of 1930, as amended, to prevent any undue hardship upon importers or interference with the long-established judicial review of appraisement administrative actions. To accomplish this the second sentence of said section 501, as amended, should be amended by inserting following the word "appraiser" the words "including all determinations entering into the same."

SECTION 20—CONVERSION OF CURRENCY

The proposed section 20 dealing with conversion of currency would alter radically the existing system for converting foreign currencies for purposes of assessment and collection of duties as judicially interpreted by the United States Supreme Court, and the United States Court of Customs and Patent Appeals, *Barr* v. *United States* (324 U. S. 83 of 1945), *Barr* v. *United States* (35 C. C. P. A. 1, 1947). Simplification might be achieved under the new proposal, but if so, it would be at the expense of the long-recognized rights of importers and foreign traders to have the duties fixed by the Congress imposed on the true value of merchandise imported into the United States.

Under existing law the true dollar value of imported merchandise for customs purposes is required to be ascertained by conversion of foreign currency at the proclaimed value of foreign coins on the gold basis.

The statute provides that "the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value" and the Secretary of the Treasury is required to proclaim quarterly "the value of the standard coins in circulation of the various nations of

the world." It is claimed that these proclamations now serve little purpose because of the general abandonment of the gold standard and that customs duties are rarely based upon such proclaimed values. The proposed revision would accordingly repeal the requirement referred to and substitute par values maintained pursuant to articles of agreement of the International Monetary Fund or by any other international agreement to which the United States may become a party.

The customs bar feels that the question of whether or not the gold standard should be abandoned is a matter of policy for determination by the Congress. We do, however, direct the attention of the committee and the Congress especially to the fact that the determination of the values of the foreign coins would be transferred out of the hands of a United States agency to an international organization if the proposed substitute currency provision be adopted.

Under present law, if the Secretary of the Treasury has not proclaimed any so-called mint par for a particular foreign currency, or if the commercial rate, called the buying rate in the New York market, differs more than 5 percent from the proclaimed par values, then conversion of the currency is required to be made at such commercial buying rate.

The duty of determining such commercial-buying rates is placed upon the Federal Reserve Bank of New York. The existing law has been judicially interpreted to require certification and use of more than one exchange rate in situations where multiple exchange rates exist for one or more currency. The courts have held that the proper rate applicable to a particular class or kind of imported merchandise was the rate used commercially for the purchase and sale of that particular class and kind of merchandise (*Barr* v. *United States*, 35 C. C. P. A. 1, of 1947). This judicial construction has operated to insure that an importation into the United States purchased in foreign currency would be translated into American currency at a value which would truly and accurately reflect the actual commercial value of the merchandise.

The proposed revision would do away with this system and substitute use of a single rate of exchange fixed by the international monetary fund or some other unnamed international organization in all cases where such par values existed, and would permit use of a commercial-buying rate only in cases where such par value had not ben determined by some such international organization. Even where the commercial-buying rate could be used, however, such use would be subject to discretion of the Secretary of the Treasury.

For all of these reasons the Association of the Customs Bar is opposed to section 20 of H. R. 5505. The following amendments to such proposal are necessary to avoid too sweeping a delegation of the power of the Congress to maintain the historic right of importers to judicial review of administrative action, to avoid possible arbitrary administrative action and to insure that, as in the past, the value of foreign currencies shall be converted into United States values for the purpose of assessment and collection of tariff duties pursuant to a system that will insure such collection on a true value of the imported products.

Page 34, lines 4 and 5, delete the words "or pursuant to any other international agreement to which the United States is a party." This suggestion is believed self-explanatory and is intended to prevent a blind delegation of uncontrolled power (See *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495.)

Page 34, line 11, delete the words "subdivision (d)" and substitute therefor the words "subsections (b) and (c)".

Page 34, line 14. Following the word "date" insert the words "or if such par value varies by 5 percent or more from a value measured by the applicable buying rate in the New York market at noon on the date of exportation." This amendment is necessary to preserve the historic system of converting foreign currency at the true commercial value.

Page 34, line 14, insert the word "buying" the word "applicable. Page 34, line 23. Following the word "certified" insert the following: "for each business day, excluding Sundays and days on which banks are generally closed."

The existing law requires the Federal Reservev Bank to certify buying rates daily. In practice this has proved too strict a requirement but it should be made clear that the Federal Reserve Bank is required to certify buying rates for every business day in order that all such rates may be available for use when needed.

Page 34, lines 24 and 25, delete the words "at such times and to such extent as he shall deem necessary." The Supreme Court of the United States held in *Barr* v. *United States* (324 U. S. 83) that the power of the Secretary to publish

buying rates under present law was purely ministerial and that such power might not be exercised in such a way as to defeat the method of assessment which Congress had provided. In that case the Secretary of the Treasury caused to be published only the higher of two rates for the English pound, and caused conversion of the currency to be made at such higher rate. The Court held this to be error and that even though the lower and correct rate had not been published it must be used to reflect the true dollar value of the importation. Despite this injunction of the Supreme Court, the Secretary of the Treasury has failed to publish all of the buying rates certified to him by the Federal Reserve bank for the purpose of the present statute, section 522 of the Tariff Act of 1930. As a consequence, importers are frequently left in the dark as to the existence or nonexistence of the proper certified rates applicable to their merchandise. The above-suggested amendment would require the Secretary of the Treasury to publish all buying rates certified to him under the currency statute.

Page 35, following line 9, insert a new subdivision (b) to read substantially as follows:

"If more than one buying rate exists for a particular foreign currency, the Federal Reserve Bank of New York shall determine and certify under the provisions hereof and for the purposes of this section, each and every such buying rate actually used in commercial transactions."

Subdivision (c) of the proposed section 522 provides for certification by the Federal Reserve Bank of New York of dual or multiple rates of exchange for a particular foreign currency. It has been the practice of the bank to certify only those rates which it decided were properly applicable to the conversion of foreign currency for the purpose of assessment and collection of tariff duties. It has failed to certify some commercial buying rates which were actually used in commercial transactions in connection with the importation of merchandise into the United States. The Supreme Court has held that the power of the bank to certify exchange rates is in the category of administrative or executive action which is nonreviewable (*Barr* v. *United States* supra). (See also *Schmoll Inc.* v. *Federal Reserve Bank*, 286 N. Y. Rep. 503 of 1941.)

If conversion of currency is to be made on a basis to truly and accurately reflect the actual value of the imported merchandise, it should be made mandatory upon the Federal Reserve bank to certify all commercial buying rates for a particular foreign currency. If this be done, the bank's determination of such rates would still be a discretionary act and nonreviewable in the courts, to be sure. But the integrity of that bank would insure that all commercial buying rates which existed for a particular foreign currency would be certified and published. Customs officers would thus have before them complete information of all possible commercial buying rates and, in accordance with the further direction of the statute, would be required to use the rate which reflected the value of the foreign currency in particular commercial transactions. Unless this suggestion be adopted, it is not seen how the direction in proposed subdivision (c), page 35, lines 15 and 16, that the applicable rate or rates shall be used "which reflect effectively the value of that foreign currency in commercial transactions" will mean anything.

Page 35, lines 20 to 25, and page 36, lines 1 to 8, inclusive, delete the entire section beginning with the word "when" on line 20. For reasons already fully stated, this is believed to be far too broad and sweeping a power to grant to any administrative officer, and particularly to any international organization under any international agreement to which the United States may become a party.

POSSIBLE EFFECT REORGANIZATION PLAN NO. 26 OF 1950

The possible effect of the Reorganization Plan No. 26 of 1950 (15 Fed. Reg. 4935) must be considered in connection with the pending bill. Under that plan the Congress approved the transfer to the Secretary of the Treasury of "all functions of all other officers of the Department of the Treasury and functions of other agents and employees of such Department" (Sec. 1–A, Plan No. 26).

Section 2 of that plan further provides that the Secretary may, from time to time, make provisions "as he shall deem appropriate" authorizing any officer, agent, or employee to perform any of the functions so transferred to the Secretary. It is understood that the Secretary of the Treasury has redelegated the functions of the Bureau of Customs and all customs collectors and appraisers to the representative agency or official under an order No. 120 issued July 31, 1950. Notwithstanding this fact, the Secretary of the Treasury would seem to possess authority to repossess these functions at any time by rescinding his order No. 120 referred to and to substitute his judgment and action for that

of collectors of customs and appraising officers. The result may well be again to raise the question of the scope of judicial review intended by the Congress to be applied to all actions of collectors of customs and appraising officers.

Statements were made in the record before the Ways and Means Committee that the provisions of the proposed customs simplification bill are not intended to and will not alter or take away in any respect, existing rights of importers to full judicial review of administrative action in connection with imports. No possible doubt should be permitted to exist on this point. To insure preservation of this invaluable right to the import trade, there should be inserted at the end of the bill a provision along the following lines:

"Nothing in this Act or in Reorganization Plan Number 26 of 1950 or in other reorganization plans adopted pursuant to the Reorganization Act of 1949, shall be construed to limit or restrict any rights of importers and others under sections 489, 501, as amended, and 514 and 515, Act of 1930, or to limit or restrict the jurisdiction of the United States Customs Court or the United States Court of Customs and Patent Appeals (28 U. S. C. 1582, 1583, 2631–2637, inclusive, 2638–2642, inclusive)."

Senator KERR. Mr. Miller? All right, Mr. Miller, you may sit down.

STATEMENT OF CHARLES C. MILLER, DIRECTOR OF PUBLIC RELATIONS, RUBBER MANUFACTURERS ASSOCIATION, INC.

Mr. MILLER. Mr. Chairman, my name is Charles C. Miller. I am employed by the Rubber Manufacturers Association, Inc., of 444 Madison Avenue, New York, as director of public relations.

Mr. C. P. McFadden, chairman of the rubber footwear division of our association, had been scheduled to appear before you today. Due to circumstances beyond his control, he found it impossible to reach Washington in time for this hearing.

In his place and on behalf of the rubber footwear manufacturing industry, I should like to make a very brief statement for the record.

We appeared before the House Ways and Means Committee during the first session of this Congress to register our objections to several provisions of the customs simplification bill as considered in its original form.

Our primary objection was directed at the proposal in the original measure to scuttle the long-accepted American selling price principle as a basis for computing duty on certain imports, among them, waterproof rubber footwear and rubber-soled canvas footwear.

The rubber footwear industry was pleased to note that the House saw fit to retain the American selling price principle which has been a basic part of the organic customs law of this nation for more than a quarter of a century.

There remain in the measure now before you, however, certain provisions that disturb the rubber footwear industry and give it cause for concern.

The provisions to which we refer were not remedied by the House. For that reason we wish to register again our objections to these features of the bill.

Since these aspects of the measure are essentially technical in their nature, I wish to leave the discussion of the details to our counsel, Mr. John G. Lerch, who is scheduled to follow me on today's calendar.

Mr. Lerch will discuss these provisions in detail. We endorse all of the arguments that Mr. Lerch will submit.

Thank you very much, Mr. Chairman, for your courtesy in permitting us to be heard.

Senator KERR. All right, Mr. Miller, we will hear Mr. Lerch.

Mr. MILLER. Thank you, sir.

Senator KERR. I understand Mr. Lerch is appearing here on behalf of some eight organizations.

Mr. LERCH. Eight industries; yes, sir, Mr. Chairman.

Senator KERR. Well, I trust that the word you used, "industries," is not entirely different from the word I used, "organizations."

Mr. LERCH. Not at all.

Senator KERR. You may proceed.

STATEMENT OF JOHN G. LERCH

Mr. LERCH. Mr. Chairman, my name is John G. Lerch. I am the surviving partner of the firm of Lamb & Lerch, doing business at 25 Broadway, New York City, specializing in the practice of customs law.

I entered the customs field in 1912 as private secretary to the Honorable Eugene G. Hay, a judge of what is now the United States Customs Court. In that capacity, it was part of my duties to assist in the preparation of decisions of customs cases. In 1920 I left Judge Hay and joined the staff of the Assistant Attorney General in Charge of Customs, where for 5 years I was Chief of the Reappraisement Division which had charge of all litigation pending before the customs courts involving the value of merchandise. On January 1, 1926, I left the Department of Justice to establish my present firm. I have been continuously in the practice of customs law since that date.

I am appearing here on behalf of the following industries: Candle Manufacturers Association, 19 West Forty-fourth Street, New York, N. Y.; Twisted Jute Packing and Oakum Institute, 19 West Forty-fourth Street, New York, N. Y.; the Industrial Wire Cloth Institute, 74 Trinity Place, New York; National Building Granite Quarries Association, Inc., 114 East Fortieth Street, New York, N. Y.; the Rubber Footwear Division of the Rubber Manufacturers Association, 444 Madison Avenue, New York, N. Y.; the Toy Manufacturers of the U. S. A., Inc., 200 Fifth Avenue, New York, N. Y.; United States Potters Association, East Liverpool, Ohio, and the Collapsible Tube Manufacturer's Association, 19 West Forty-fourth Street, New York, N. Y.

May I say at this point, that I testified before the Ways and Means Committee of the House on this bill, and submitted a brief, and that appears at page 319 of the printed record of the Ways and Means Committee hearings. In that brief I touched on various sections, 3, 6, 11, 13, 17, 19, and in my testimony, 20 of the present bill, and rather than go into that all over again, I ask the committee to have reference to that brief as printed in the House record.

Senator KERR. That is different from the statement you will make here?

Mr. LERCH. I am going to touch on some of those points.

Senator KERR. If you care to, that may be inserted as part of this record.

Mr. LERCH. I would appreciate it very much.

Senator KERR. Very well.

(The brief above referred to is as follows:)

AUGUST 1951.

Re customs simplification bill, H. R. 1535.

CHAIRMAN, WAYS AND MEANS COMMITTEE,
House of Representatives, Washington, D. C.

SIR: I testified before your committee on August 14, 1951, and in that appearance I limited my remarks to a few of the sections in the proposed bill which I regarded to be the more important and illustrative of the intent and scope of the revision of the existing law.

Since I appeared, I have heard most of the testimony that has been introduced and it occurs to me that it would be helpful to the committee in the consideration of this bill if a more complete survey was made and the committee shown the actual changes which more of the sections in the bill would accomplish.

I therefore respectfully ask that this memorandum be received and made a part of my original remarks.

REPEAL OF SPECIAL MARKING REQUIREMENTS

Section 3 repeals the special provisions in a number of the paragraphs of the Tariff Act of 1930. The first in the enumeration is paragraph 28. It provides for the deletion of the words "the immediate container and," where they appear in subparagraph (f) of that paragraph. This would leave the only requirement for the identification of a color, dye, stain, etc., that of describing it on an invoice, and would permit the entry into the commerce of the United States of foreign-made products in this paragraph with no identification on the container that reaches the consumer to show its foreign origin. There are many articles under this paragraph where their American origin would be a definite asset in their acceptability. Foreign origin may be a detriment. This same observation could be made as to each of the commodities in the paragraphs enumerated in section 3 (a), and as to which the special marking provision is deleted. Congress, over a period, has seen fit to accord these American industries the protection of having certain competitive foreign merchandise so specially marked that the consumer will know that he is not getting domestic-made merchandise. The removal of this requirement may definitely permit the sale of imported merchandise in this country as American-made goods.

FREE ENTRY PROVISIONS FOR TRAVELERS

Section 6 (c) (A) and (B) of the proposed bill provides for the free entry of merchandise being brought back by American tourists. Subparagraph (A) permits one who has remained abroad for a period of not less than 48 hours to bring back with him $200 worth of merchandise. Subsection (B) permits an American citizen who has been abroad for a period of not less than 12 days, to bring back $500 worth of merchandise.

While it may seem an altruistic attitude toward our citizens on the part of their Government, this provision could very readily work great hardship on some domestic industries. For illustration, English bone china because of arrangements between England and Canada sells in Canada at a very reasonable price over that at which it is sold in this country and over comparable merchandise made in this country. If a traveler to Montreal, let us say, remained there for the 12-day period, he could bring back four or five bone china dinner sets, free of duty under this exemption, and it could develop into a very prosperous industry running these valuable china sets into this country and disposing of them at the prevailing American price to the detriment of the American industry.

While the proposed section provides a penalty for the sale of merchandise brought in by tourists, this provision in practice would be practically meaningless since it would be impossible to check every $500 worth of merchandise brought in by tourists to determine whether it had been sold.

ADMINISTRATIVE EXEMPTIONS

Section 11, among other things, contains a provision which in the language of the Treasury Department analysis of this bill "would allow persons to bring with them or import by mail up to $10 for their personal use, and would allow free

entry up to $5 in other cases." It is conceivable under the $10 exemption for mail importations that a mail-order house in Canada circularizing the United States could become very prosperous to the detriment of American industry.

While it is true that the present law requires the collection of duty on trivial amounts, yet that might prove a good investment over the injury that may be done by the free entry of merchandise up to $10.

VALUE—SECTION 13

I have commented upon this section in my appearance before your committee. In my comments on comparative value, I intimated that the great bulk of imported merchandise subject to ad valorem duties would be appraised on the comparative-value basis which permits an appraiser to arrive at a value for imported merchandise by a system of additions, deductions, and allowances, all of his own making.

That comparative value would be the form most generally used is confirmed in the Treasury analysis at the bottom of page 22 in its explanation as to why constructed value would be so little used "since it would make it possible for appraisers to estimate the comparative value from comparable merchandise in many cases which now must go to 'cost of production.'"

On page 23 of the analysis, the following sentence appears:

"Entirely apart from questions of administrative expense and efficiency, the Treasury Department believes that in any system of ad valorem taxation, the value used should be the true value, the market value when the merchandise has a market, and not an arbitrary or fictitious value."

How this language can be applied to comparative value is very difficult to understand since a value arrived at by an appraiser through estimates and allowances must of necessity be more or less arbitrary or fictitious. It certainly does not subscribe to a definition of fair or actual value. Under this system, would not an importer have to be able to read the appraiser's mind to determine what amount of duty he is going to pay when he imports a given shipment?

Furthermore, section 13 contains new definitions. Assuming, which I think is most doubtful, that under the proposed law the right of judicial review of the appraiser's action will remain, it will require decades of litigation in our customs courts before the meaning of these definitions can be definitely ascertained. In the light of the flood of litigation that is certain to occur, can it be said that the work of the appraiser will be simplified, or would it not be more accurate to say it will become uncertain and confused?

As I have said before, there can be no reason for the abandonment of the present system for an entirely new system, except as the Secretary admits on page 24 of the analysis that we pledged ourselves to some such system in article 7 of GATT.

AMENDMENT OF ENTRIES AND DUTIES ON UNDERVALUATION

Section 17 will, from any practical interpretation you can place on it, virtually remove the assessment of additional duties that are now imposed under our law. Existing law, in effect, requires that there be assessed in addition to all other duties a duty of 1 percent for each 1 percent that the appraised value exceeds the entered value.

Over a long experience, this policy was found necessary in order that the importer accurately state on his entry the proper value for duty purposes. This assured the appraiser of the maximum amount of information as to the value of imported merchandise. Under existing law where an additional duty was assessed, it can only be remitted by the United States Customs Court upon a finding that the entry at less than the appraised value was made in good faith and not intended to deceive the appraiser. The proposed section 17, to use the words of the Secretary at page 29 of his analysis, "would provide that the undervaluation duty shall apply *only* in cases where there is *not only an undervaluation* but also a failure on the part of the importer to furnish to the appraiser all information available to the importer at the time of entry or within a reasonable time thereafter, which is required by customs and is relevant to the value of the merchandise." [Italics ours.]

The bill also gives discretion to the customs officials to determine whether or not additional duty shall be assessed, and it is only such cases in which the customs official decides to penalize an importer and assess the additional duties that will go to the United States Customs Court as under existing law.

This discretion, coupled with the ability of the appraiser under section 13 of the proposed bill to estimate values, is, as has been said, that it gives too much power to a dishonest man and more power than an honest man would want.

CORRECTION OF ERRORS AND MISTAKES

Section 19 of the proposed bill amends section 520 (a) (3)—clerical error. This subsection permits the correction of a clerical error within a certain time and under certain conditions. The proposed section broadens this provision so as to include:

"(1) A clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service * * *."

The customs courts have construed existing law to relate only to a clerical error which was manifest from the papers in the case. The decisions also tend to limit this remedy to the invoice and entry papers.

Under this proposed provision it is made to include a "mistake of fact, or other inadvertence not amounting to an error in the construction of a law, * * * manifest from the record or established by documentary evidence." By this language there is placed in the hands of the Secretary of the Treasury the right to pass upon practically any irregularity that will be alleged to have occurred in the entry, liquidation, appraisement, or other customs transaction.

During the hearings a member of your committee expressed a suspicion that there may be sleepers in this act. If there are circumstances under this act that can be so designated, this is one.

Under existing law, the Secretary is empowered to correct a manifest clerical error. All other jurisdiction he is given by this bill is reserved to the United States Customs Court upon a timely appeal or protest after the action of the administrative Government official has taken place.

Under this provision the Secretary of the Treasury could readily become the court of first instance in cases of this character and if the importer secured the desired redress in this forum obiously he would have no reason to appeal to the customs courts.

Mr. Chairman, I have imposed upon you to the extent of this memorandum in an effort to show what I meant when I testified before your committee that this bill amounted to a tariff revision under an anesthetic.

From the sections that I have reviewed in my testimony and in this memorandum you can readily see that provisions of existing law have been repealed in toto. Entirely new provisions have been substituted. Existing powers of Government officials have been materially extended. Board discretion has been vested in Government officials where it does not now exist. The provisions of this bill may materially change the jurisdiction of the customs courts over some forms of litigation. And, finally, there is grave question under the proposed bill as to whether or not it will not completely divest the court of its jurisdiction on questions of value.

Respectfully submitted.

JOHN G. LERCH.

Mr. LERCH. I have another brief which I am going to ask to be inserted in the record.

Senator KERR. If it is repetitious, then it will not——

Mr. LERCH. No; it is not.

Senator KERR. All right.

(The document referred to is as follows:)

APPLICATION OF AD VALOREM RATES OF DUTY

LEGISLATIVE HISTORY, REVIEW OF BASES OF APPRAISEMENT, AND COMMENTS ON SECTION 13, H. R. 5505

(By John G. Lerch, New York)

REVIEW OF LEGISLATIVE HISTORY

In order to more fully understand what we have in the provisions of section 402 of the Tariff Act of 1930, and how section 13 of H. R. 5505 may affect it, it may be well to examine briefly the history of what led to this section.

The preamble to the very first Tariff Act passed by our Congress on July 4, 1789, reads as follows:

"SEC. 1. Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandise imported."

That act levied both specific and ad valorem duties. The act based the ad valorem duties on the "value thereof at the time and place of importation." This was substantially the British system of assessing duty on the value of the merchandise on the pier at the time of importation. It has sometimes been called landed value.

In the act of April 20, 1818, apparently the basis of value was changed by section 4 to a form of export value:

"SEC. 4. And be it further enacted, That the ad valorem rates of duty upon goods, wares, and merchandise, shall be estimated by adding twenty per cent. to the actual cost thereof, if imported from the Cape of Good Hope, or from any island, port, or place, beyond the same, and ten per cent. on the actual cost thereof, if imported from any other place or country, including all charges, except commissions, outside packages, and insurance."

In section 9 of this same act of 1818 the appraisers are instructed to find, "to the best of their knowledge and belief, the true value thereof when purchased, at the place or places whence the same were imported."

In section 8 of the Tariff Act of May 19, 1828, we find on value the following:

"* * * and in all cases where there is or shall be imposed any ad valorem rate of duty on any goods, wares, or merchandises, imported into the United States, it shall be the duty of the Collector within whose district the same shall be imported or entered, to cause the actual value thereof, at the time purchased, and place from which the same shall have been imported into the United States, to be appraised, estimated, and ascertained, * * *."

With this change there would seem to be a shift from export value to foreign value.

Up to this time there seems to have been no attempt on the part of Congress to define or enlarge upon the terms which it used in describing the basis for appraising the value of merchandise. This seems to have begun in the Tariff Act of August 30, 1842.

With the enactment of the foregoing Tariff Act, Congress apparently saw the necessity for a more explicit description of the value basis for ad valorem merchandise. I quote from section 16 of the act of August 30, 1842:

"That in all cases where there is or shall be imposed any ad valorem rate of duty on any goods, wares, or merchandise, imported into the United States, and in all cases where the duty imposed shall by law be regulated by, or directed to be estimated or based upon the value of the square yard, or of any specified quantity or parcel of such goods, wares, or merchandise, it shall be the duty of the collector, within whose district the same shall be imported or entered, to cause the actual market value or wholesale price thereof, at the time when purchased, in the principal markets of the country from which the same shall have been imported into the United States, or of the yards, parcels, or quantities, as the case may be, to be appraised, estimated, and ascertained, and to such value or price, to be ascertained in the manner provided in this act, shall be added all costs and charges except insurance, * * *."

In the Tariff Act of March 3, 1865, again ad valorem duties were based upon foreign value, but the definition was changed to permit the determination of value "at the period of exportation." I quote:

"That in all cases where there is or shall be imposed any ad valorem rate of duty on any goods, wares, or merchandise imported into the United States, and in all cases where the duty imposed by law shall be regulated by, or directly to be estimated or based upon, the value of the square yard, or of any specified quantity or parcel of such goods, wares, or merchandise, it shall be the duty of the collector, within whose district the same shall be imported or entered, to cause the actual market value, or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same shall have been imported into the United States, to be appraised * * *" (sec. 7).

In the Tariff Act of July 28, 1866, the wording of foreign value, which was the dutiable value, was changed from "period of exportation" to the "time of exportation":

"That in determining the dutiable value of merchandise hereafter imported, there shall be added to the cost, or to the actual wholesale price or general market value at the time of exportation in the principal markets of the country from whence the same shall have been imported into the United States, * * *" (sec. 9).

Then to this foreign value was added cost of transportation in the foreign country from the place of manufacture to the port of shipment, together with cost of packing.

For the first time in any act, I find in the Tariff Act of March 3, 1883, an alternative provision for the appraisement of merchandise where the statutory basis could not be ascertained. The basis in that act was foreign value, but what is now known as cost of production in the foreign country, was prescribed where foreign value could not be found:

"SEC. 9. If upon the appraisal of imported goods, wares, and merchandise, it shall appear that the true and actual market value and wholesale price thereof, as provided by law, cannot be ascertained to the satisfaction of the appraiser, whether because such goods, wares, and merchandise be consigned for sale by the manufacturer abroad to his agent in the United States, or for any other reason, it shall then be lawful to appraise the same by ascertaining the cost or value of the materials composing such merchandise, at the time and place of manufacture, together with the expense of manufacturing, preparing, and putting up such merchandise for shipment, and in no case shall the value of such goods, wares, and merchandise be appraised at less than the total cost or value thus ascertained."

In the writing of the Tariff Act of June 10, 1890, Congress made a much more complete study of the appraisement of imported merchandise and took decided steps to insure a correct ascertainment of dutiable value. It enacted provisions requiring sworn consular invoices, more stringent requirements on entry, and originated the Board of United States General Appraisers (now the United States Customs Court) to judicially review the action of the appraisers and their interpretation of the statutes covering dutiable value. While the basis of dutiable value remained foreign value, the alternate value, cost of production, was more adequately defined in the following manner:

"SEC. 11. That when the actual market value, as herein defined, of any article of imported merchandise wholly or partially manufactured and subject to ad valorem duty, or to duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, the appraiser or appraisers shall use all available means to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture; such cost of production to include cost of materials and of fabrication, all general expenses covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of eight per cent. upon the total cost as thus ascertained; and in no such case shall such merchandise be appraised upon original appraisal or re-appraisement at less than the total cost of production as thus ascertained."

In addition to this, the penalty for failure to declare proper dutiable value on entry was made more effective. This act also removed from the jurisdiction of the collector of customs all questions of value and vested the appraiser with sole jurisdiction over these questions, giving to the collector the right to appeal

From this act it would appear that Congress realized the inadequacy of existing law to the proper administration of ad valorem duties. Important additions were made to the law but to set them forth in this memorandum would make it cumbersome. Therefore, I refer to section 6 through 13 of that act for these changes.

In the act of July 24, 1897, cost of production was revised so as to include in this form of value a larger profit. To the costs of materials and fabrication plus general expenses and packing was added "an addition of not less than 8 from the findings of the appraiser to the Board of General Appraisers.
nor more than 50 per centum upon the total cost as thus ascertained" together with the provision "and in no case shall such merchandise be appraised at less than the total cost of production as thus ascertained." (See sec. 32, subsection 11, act of July 24, 1897.)

In the Tariff Act of August 5, 1909, Congress retained the existing foreign value and cost of production and in addition thereto provided what we now recognize as United States value. It also provided that if the foreign value could not be ascertained, then duty should not be assessed on less than the cost of production as set forth in the act. It provided that on imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and as to which there exists no foreign value, it should not be appraised at less than the United States value. I quote from section 11 of that act:

"* * * The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding six per centum, if any has been paid or contracted to be paid on consigned goods, or a reasonable allowance for general expenses and profits (not to exceed eight per centum) on purchased goods."

Between 1909 and 1913 Congress must have realized the need for more stringent regulation of the dutiable value for ad valorem rates on imported merchandise. With the enactment of the Tariff Act of 1913 Congress provided additional requirements for invoicing, entering, and appraising merchandise and prescribed penalties and additional duties for failure of compliance. Although this act retained the basic form of values of the Tariff Act of 1909, by its administrative provisions it guaranteed a more rigid compliance.

Present value provisions

Even this attempt could not have kept pace with the ingenuity of the importer, for just 9 years later Congress, in the Tariff Act of 1922, collated, revised, and enlarged the provisions for the dutiable value of ad valorem merchandise, giving us for the first time the definitions of the different forms of value to be used and arranged them in the order of their application. These are substantially the provisions which are now in effect and govern the appraisement of imported merchandise even today.

That they have been evolved through experience of over a century and a half through trial and error is manifest from the partial review I have made above.

Over the entire period of tariff legislation, the Federal district courts, the Supreme Court of the United States, the Board of General Appraisers, and the United States Customs Court of Appeals have constantly reviewed the construction placed on existing value provisions in our laws, and these decisions have had a marked effect, if not a controlling influence, on the legislation developing the bases and definitions we have in existing laws (sec. 402, Tariff Act of 1930).

I cite as typical of the decisions of our courts on this subject *Tuska Son & Company* v. *United States* (10 C. C. A. 65 (38 Treas. Dec. 234)).

Of still more importance in considering the effect of judicial interpretation on legislation, I cite the exhaustive consideration of "dutiable value" by our United States Court of Customs Appeals in *United States* v. *Spingarn & Bros.* (5 Ct. Cust. Appls. 2; T. D. 34002 (25 Treas. Dec. 658)).

There can be no doubt but that this case and others, decided about the same time, led to the development and enactment of the value provisions, section 402 of the Tariff Act of 1922, giving us the provisions in the statute today, that section setting the following formula:

"SEC. 402. VALUE.—(a) For the purposes of this act, the value of imported merchandise shall be—

"(1) The foreign value or the export value, whichever is higher;

"(2) If neither the foreign value nor the export value can be ascertained to the satisfaction of the appraising officers, then the United States value;

"(3) If neither the foreign value, the export value, nor the United States value can be ascertained to the satisfaction of the appraising officers, then the cost of production;

"(4) If there be any similar competitive article manufactured or produced in the United States of a class or kind upon which the President has made public a finding as provided in subdivision (b) of section 315 of title III of this act, then the American selling price of such article."

Then followed in (b), (c), (d), (e), and (f) comprehensive definitions setting up factual conditions that must exist as a prerequisite to the application of each of the bases of value. For example, each of the definitions contained the phrases "freely offered for sale," "in the usual wholesale quantities," and "in the ordinary course of trade." It has been constantly held by our administrative officers and the courts that if sales are restricted in any manner, goods are sold only at retail; or they are not sold in the ordinary course of trade; the presence of any one of these qualifications precludes the use of that basis of value.

Section 402 of the Tariff Act of 1930 substantially reenacted the provisions of section 402 of the Tariff Act of 1922, and with a few minor changes in the Customs Administrative Act of 1938, it is the law today. Since 1922 our Treasury Department decisions and our court reports contain literally hundreds of decisions by our customs officials and our courts construing the existing provisions for value; the meaning of practically every word used in the value sections is known to importers, Government officials, customs brokers, domestic producers, or any one willing to expend sufficient time and energy to examine the reports.

Section 13—H. R. 5505

Are we now to cast aside the experience of 163 years and embark upon a voyage into the unknown in the application of ad valorem rates of duty merely because a group of United States negotiators in the General Agreement on Tariffs and Trade (GATT) at Geneva, without any semblance of authorization by the Congress, promised that the United States would make the change? Contrary to testimony given by Government officials before the Ways and Means Committee of the House of Representatives, adoption of section 13 of H. R. 5505 would, in no sense, simplify the administration of United States customs. On the contrary, it would complicate and confuse matters due to the absence of any precedents and court interpretations such as are abundantly available for administering the provisions of section 402 of the Tariff Act of 1930.

Are we now going to ratify by indirection these unauthorized commitments upon which it is assumed direct action is not deemed possible by those who commit us to them?

Section 13 of H. R. 5505, now pending in the Finance Committee of the Senate, in effect replaces section 402 of the Tariff Act of 1930, as amended, and substitutes therefor a new formula for appraising merchandise subject to ad valorem rates of duty:

(1) It eliminates foreign value entirely.

(2) It provides as the basis of all ad valorem rates "the export value."

(3) Then, "if the export value cannot be ascertained satisfactorily, then United States value."

(4) The next alternative is "if neither the export value nor the United States value can be ascertained satisfactorily, then the comparative value."

(5) Then follows "if neither the export value, the United States value, nor the comparative value can be ascertained satisfactorily, then the constructed value."

(6) The last provision is for the American selling price of a domestic article where section 336 has led to its application.

From my experience with the enforcement of the foreign value provision while I was in the Department of Justice and since in my practice of customs law, I hold no brief in our present economy for foreign value.

In our early history when imports were more or less staple articles, their foreign values were well known or readily ascertainable. Today, a foreign manufacturer with cheap labor can manufacture an article that is designed chiefly for use in the United States or for export to the United States, establish a market at a low price in his home country, that will answer the definition, and defeat the intent of the foreign value provision of section 402. In order to challenge an importer's affidavit setting forth the facts of foreign value, it is necessary that the United States Government send into that market a Federal representative to investigate and report the facts. If the foreign manufacturer has been careful in establishing his foreign market in accordance with the definition in section 402, the Government representative can only corroborate the facts set forth in the importer's affidavit.

Export and United States value

Export value and United States value, as defined in section 13 of H. R. 5505, on casual reading would seem to be practically the same as under existing law. But the definitions of these values use phrases such as "such or similar merchandise," "freely sold or offered for sale," "in the usual wholesale quantities," etc., which, in turn, are defined in subsection (h) of section 13. Although most of these terms have been in the law for almost a quarter of a century, and some for half a century, this is the first attempt to define them in legislation. This has heretofore been left to the customs officials and the duly established courts which have interpreted them as describing the factual conditions with no power

in the appraiser to speculate or estimate. By the definition in subsection (h), the appraiser is given discretionary power to ascertain or estimate what is, for example, "such or similar merchandise." This is a radical departure from the practice I have known and the requirements of our courts in construing the language of section 402. As I have above stated, our courts have construed the definitions of section 402 as requiring the existence of a set of facts in the absence of which neither the appraising officers nor the courts had any jurisdiction to estimate or make adjustments.

Other vital changes that have been made in the definition of United States value, section 13 (c), H. R. 5505, are the elimination of the maximum deductions for "usual general expenses" and "profits." In existing law, these are by statute limited to 8 percent and 8 percent. In other words, had the importer in arriving at his selling price in the United States incurred an overhead of 25 percent and realized a profit of 50 percent, he is, by existing statute, permitted only to deduct 8 percent and 8 percent. Under the proposed statute, he is permitted to deduct the actual percentages if they coincide with the percentages usually added.

Under section (c) (3), if the appraiser cannot determine United States value due to a lack of the conditions mentioned therein, he can ascertain or estimate such values. His authority for ascertaining or estimating such value is found in the following language: "The United States value shall be ascertained or estimated, subject to the foregoing specifications of this subsection * * *."

Comparative value

This brings us to comparative value as defined in section 13 (d) of the proposed act. It is a short definition and I quote it:

"(d) COMPARATIVE VALUE.—The comparative value of imported merchandise shall be the equivalent of the export value as nearly as such equivalent may be ascertained or estimated on the basis of the export or United States value of other merchandise from the same country which is comparable in construction and use with the merchandise undergoing appraisement, with appropriate adjustments for differences in size, material, construction, texture, or other differences."

Based upon my experience, I can predict that an appreciable percentage of all imported merchandise with duties based upon ad valorem rates will come within this definition. For example, if an importer arranges with his foreign producer to sell only to him for export to the United States, it will remove export value. If the importer in turn does not sell in the United States but consumes the merchandise in further manufacture, or sells only through his own licensed distributors at retail, there would be no United States value. In this case, comparative value would be the basis of the appraisement.

In the above example, let us assume that the merchandise is a high quality woolen tapestry that would find a market only in the United States. There being no tapestry of that quality or design shipped from the country of exportation, it would be necessary for the appraiser to select a low-grade tapestry or some other fabric made of wool upon which to base his estimate of what the export or United States value would be making "adjustments for differences in size, material, construction, texture, or other differences."

There is provided no limitation in making these adjustments and no yardstick to guide the appraiser in making them. In the hands of an honest, industrious appraiser, this statute might be made to work, but in the hands of an arbitrary, indolent individual, it could be grossly abused.

Since the adjustments to be made are figments of the mind that makes them, they involve the exercise of a discretion and, in the hands of the unscrupulous individual, could be an open invitation to fraud.

Can you imagine what could happen under this provision if an importer brought in a shipment of hand-blown glass perfume bottles of a copyrighted design for his own use in dispensing perfume in the United States (Coty or Chanel), and the only other bottles coming from the same country of exportation being machine-blown, mass-produced toilet-water bottles of approximately the same size and simulating but not infringing the copyright of the perfume bottle? The importer of the perfume bottle may have paid $1 for his bottle, and the toilet-water bottle may have been bought for 5 cents. However, they are of the same material, construction (both being blown), texture (glass has but one texture), so that the difference in the price paid must be "or other differences."

Many similar illustrations could be given. The mere statement of these facts should reveal the possibility of iniquitous action under this definition.

Once the appraiser had exercised his prerogative to appraise an item under "comparative value" making "appropriate adjustments" he would have exercised a discretionary power, vested in him by Congress, as a Government official.

Discretionary power not reviewable

It is well-settled law that our courts will not review a decision of a Government official or agency which has been arrived at through the exercise of discretionary power vested in that official or agency by Congress.

In *Barr* v. *United States* (324 U. S. 83, 89 L. ed. 565, T. D. 51197), the Supreme Court of the United States in reviewing the discretionary power conferred upon the Federal Reserve Bank of New York by section 522 (c) of the Tariff Act of 1930, stated:

"* * * The exercise of the bank's discretionary power under section 522 (c) is in the category of administrative or executive action which this Court held nonreviewable in *Cramer* v. *Arthur*, 102 U. S. 612, 26 L. ed. 259, supra, and in *Hadden* v. *Merritt*, 115 U. S. 25, 27, 28, 29 L. ed. 333, 334, 5 S. Ct. 1169. And see *United States* v. *Bush & Co.*, 310 U. S. 371, 380, 84 L. ed. 1259, 1262, 60 S. Ct. 944."

Finding comparative value by selecting a comparable material imported from the same country and estimating the value of the imported merchandise by making allowances for various differences is not unlike the power vested in the Federal Reserve bank under section 522 to select from the vast number of cable transfers of currency of a foreign country, a particular rate which it certifies at noon each day.

There has been no material change made by the proposed act in the right of an importer to appeal from the decision of the appraiser (sec. 501, Tariff Act of 1930) to the United States Customs Court for a reappraisement. However, under the decisions above cited, it would be an empty gesture to file an appeal only to find when your case was called by the judge of the United States Customs Court, he had no power to review the discretionary act of the appraiser in finding dutiable value under section 13 of the proposed bill.

It has been said that the appraiser has always had discretionary power to "ascertain and estimate" the value of imported merchandise. That language appears in section 500 of the Tariff Act of 1930, setting forth the duties of appraising officers, as it has in many prior tariff acts.

As I have shown by this survey of early statutes, the appraiser actually estimated the "actual cost" or the "actual value" of imported merchandise but since the enactment of the Tariff Act of 1922 which gave us factual bases for value, I know of but one case in which the court permitted the appraiser to find dutiable value by this means. That was the case of sewing machine heads imported from the Singer Manufacturing Co., Ltd., of Scotland, by the Singer Manufacturing Co. of New Jersey (Reap. Cir. No. 35122). Judge Fischer in deciding this case on October 9, 1924, after finding that there was no foreign market value, no export value, no United States value, and no cost of production, affirmed the appraiser's finding, which was based upon a retail selling price in the United States with deductions and allowances which brought his figure to what he considered a constructed wholesale value had one existed.

After reviewing all the facts in the case, Judge Fischer affirmed the appraiser's finding and stated:

"In the circumstances I hold that in proceeding as he did in the present case the appraiser merely performed his obvious duty and fulfilled the statutory obligation imposed on him by section 500 of the tariff act to appraise the merchandise in the unit of quantity in which merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power any statement of cost or cost of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding."

From the foregoing it will be seen that "comparative value" is a new and novel basis for the determination of a value on which ad valorem rates are to be predicated. It is a fact that it discards 163 years of experience through trial and error, or, may I say, evolution, in favor of a new theory expressed in new language which will require decades of litigation before both its scope and meaning can be determined to the extent that appraising officers will be able to administer it. If this is "simplification," I am utterly unable to understand the meaning of the word; it has more the appearance of being "confusion."

Constructed value

Constructed value, as defined in section 13 (e) is a revamp of section 402 (f) of the Tariff Act of 1930, "cost of production."

It, too, has suffered in the revamping. The major change in this form of value over existing law is in section (e) (2) wherein sections (f) (2) and (4) of the Tariff Act of 1930 are combined in the proposed bill to form the section referred to.

From my review of previous statutes, it will be seen that this form of value has had a long legislative history. In the Tariff Act of July 24, 1897, section 11, the previous cost of production statutes were amended so as to provide "and an addition of not less than 8 nor more than 50 per centum upon the total cost as thus ascertained." From this act evolved the provisions in existing law of an addition of not less than 10 per centum for general expenses and not less than 8 per centum in addition thereto for profit.

I quote section 13 (e) (2), H. R. 5505:

"(2) an addition for general expenses and profit equal to that which producers in the country of production whose products are exported to the United States usually add in sales, in the usual wholesale quantities and in the ordinary course of trade, of merchandise of the same general class or kind as the merchandise undergoing appraisement."

A reading of this provision shows that the proposed law eliminates any minimum additions for general expenses and profit. It also changes the venue of the additions for general expenses and profit from that which was realized by the producers in the country of origin to "producers in the country of production whose products are exported to the United States."

In a world economy such as has existed since World War II, the United States dollar has vitally affected the economy of all nations. The wild scramble of all industrial countries of the world for dollars has led to the manufacture and offer of competitive merchandise to the United States at prices which bear little relation to the cost of production as defined in section 402 of the Tariff Act of 1930. The impelling motive of foreign producers has been to ship merchandise to the United States to obtain dollars in order that they may buy raw materials in the markets of the world with which to manufacture merchandise for sale in a more profitable export market than the United States.

In this economy it could readily be that we might find sales made for export to the United States in which there is added little or nothing for general expenses and profit. In sales of this character under the proposed definition of constructed value, there would be no addition for general expenses and profit.

There are other changes in this section, less radical in effect, but which would require judicial interpretation before the section could be administered with clarity by government officials.

It is a well-settled principle of law that the courts will not impute to Congress an idle act, that each change in the wording of a statute must be given meaning when used in a new act.

In *United States* v. *Post Fish Co.*, 13 Ct. Cust. Appls. 155, at page 158, the court said:

"This change of language must be given effect, if possible. To hold it meaningless is to ascribe to Congress the doing of an idle and useless thing, and this we may not do. We have, on many occasions, reiterated the statement that it is the primary duty of courts to attempt to give effect, in their judicial acts, to the expressed and manifest intent of the legislative body. Courts and judges of our country may not too often remind themselves that they are not to make laws, but to construe them; that the question of what shall be contained within the statute is not a matter of their concern, but rather what the statutory meaning is and the scope, extent, and degree of its influence and control. We may not add to nor detract from the language used by the legislative body, when that might seem to be, for the particular matter being adjudicated, the more prudent, just, or wise course. The safety of our governmental institutions requires each of its great agencies, the legislative, executive, and judicial, to confine itself strictly to its own constitutional functions."

While many of the changes in section 13 of H. R. 5505 may seem inconsequential, applying the above doctrine to each and every change could readily resolve this statute to one of "confusion" rather than "simplification."

Mr. LERCH. Mr. Chairman, in this day of congressional investigations, grand jury investigations, and departmental investigations of

corruption and malfeasance in office—and in this day of wholesale resignations of Government officials whose offices are slated for investigation——

Senator KERR. Now then, I wonder if at this point you would agree to insert in the record the details of the facts which are generally referred to in that phrase, upon this phrase is based?

Mr. LERCH. Just what phrase do you have reference to?

Senator KERR. Wholesale resignations of Government officials whose offices are slated for investigation.

Mr. LERCH. Well, the papers have been full——

Senator KERR. I say, I just wondered if you would insert in the record at this point a detail of the facts upon which you based that general conclusion.

Mr. LERCH. Of course, it is based upon what I read in the press.

Senator KERR. I say, I wonder if you would insert into the record at this point or as a part of your remarks a detail of the information upon which that general statement is based.

Mr. LERCH. Subsequent to my testimony, if you would like me to augment it, I would be glad to do so.

Senator KERR. I would just like for you to insert in the record the detail of the Government officials whose offices are slated for investigation. I mean, that is quite a statement, very broad, and in order that the committee may have the information, would you insert in the record the detail upon which it is based?

Mr. LERCH. So far as I am able, I will.

Senator MARTIN. Mr. Chairman, I don't have any objection to its going in, but when we had the debates over in the Senate on the reorganization plan of the collectors of internal revenue, it was brought out that 147—there had been 147 resignations and convictions; 7 of them were appointments not under civil service, and over 140 of them under civil service. That was all brought out——

Senator KERR. I understand that under the 1 year of Mr. Mellon there were some 1,200, and I think that is interesting, and if 147 are what the witness has in mind out of the two and a half million, as constituting a wholesale situation, I think the committee should be entitled to have that.

Senator MARTIN. What I make reference to is the 147 was brought out in the debates; that was in this one department, in the collection of revenue. It does not have anything to do with the 2,500,000——

Senator KERR. I do not know whether it has anything to do with what the witness said.

Senator MARTIN. As a matter of fact, you have got to get back over to the floor at 12 o'clock. I would very much rather have a discussion of the bill before us than this part of it.

Senator KERR. I did not ask the witness to put this statement, this phraseology, into the record. I only asked him to document it.

Senator MARTIN. Well, the witness has a right to——

Senator KERR. He has a right to decline if he wants to. I did not demand it; I just requested it. He has a perfect right to decline if he so desires.

Mr. LERCH. May I go on, Mr. Chairman?

Senator KERR. Yes, indeed. I will tell you this before, if there is any reference to any such statement as that, I am going to request you to document it.

Mr. LERCH. Very good. I am going to—the point of making that statement is that it strikes me that in an atmosphere of this sort that it is the duty of Congress to examine with great care any proposed statute which vests in a Government official or agency arbitrary or discretionary power.

It is my opinion, and the opinion of those that I represent, that H. R. 5505 is a further delegation of legislative power to the executive branch of the Government; in some instances, vests in Government officials arbitrary, and, in other instances, powers of wide discretion.

While this bill is labeled the 'Customs Simplification Act," some of its provisions greatly transgress the realm of "simplification."

The negotiators of our trade agreements have written into those agreements many changes in which customs rates and procedure have been modified. In the General Agreement on Tariffs and Trade (GATT), additional commitments were made, and in the opinion of some of us who have watched this procedure since its inception in 1934, H. R. 5505 is the embodiment of those changes in our customs laws which our negotiators did not have sufficient fortitude to write into an agreement, but the onus of which by this bill, they attempt to place on the Congress.

Now, at this point I would like to say that I am in thorough accord with all of the points which Mr. Colburn made, and I will not go into detail and discuss those things which he touched on, for I am in thorough accord with them.

I would like to touch on section 6 of this bill, which has to do with the $10 free entry of merchandise. It is section 11—I am sorry. It raises the $1 exemption in existing law to $10 on merchandise received from a foreign country by mail.

The effect of this provision is to permit packages received from a foreign country valued at not more than $10—and there seems to be no limit to the number—to be entered free of duty. The only inhibition is that a large order may not be split into packages of less than $10 in order to avoid the payment of duty.

This means that anyone can order from a mail-order house, or other place of business, in Canada or other foreign country any number of commodities, provided each shipment does not exceed $10 and receive them free of duty. Already, I am told, Canadian mail-order houses have circulated populated areas of the United States with catalogs. Their success is not too great since postal authorities must collect the regular duty assessable on such commodities. However, if this provision is enacted into law with the reduced labor cost of foreign countries, it can be anticipated that great inroads will be made in certain industries. Typical of this would be the toy industry, the rubber-soled footwear industry, rubber goods of various kinds, the earthenware industry, and many others.

I cut from the New York Times Magazine of March 16, 1952, an advertisement of a London house offering the Royal Princess doll to customers in the United States for $7 postpaid, plus duty. I hand this clipping to the reporter for the committee's information. You will see that this is a near-unbreakable doll, 22 inches tall, with "natural" hair lashes and hand-curled wig, washable, combable, and permable. It is also bedecked with crinoline, lace-trimmed knickers, and button-on shoes. The nearest comparable domestic doll to that offered without some of these attractive qualities has to be made to sell at

$16. Would it be too much to anticipate the amount of business that this firm could do if section 11 of this bill is passed?

(The advertisement referred to has been placed in the files of the committee.)

Senator MARTIN. Mr. Chairman, may I ask a question?

Senator KERR. Indeed.

Senator MARTIN. Do you have the wage scale for the making of dolls in Great Britain and also in the United States?

Mr. LERCH. I do not have that accurately, but I am told that a skilled laborer there gets about—the ratio is about 1 to 4; in other words, 4 hours for 1 here.

I am told by the rubber-soled footwear division of the rubber industry that over 90 percent of the items they make sell for not over $10. It is well known that there is strong competition from abroad with this industry. Even the assessment of duty under the American selling price provision of our law under existing economic conditions does not prevent ruinous competition.

Senator MARTIN. Do you happen to have any information as to how much that has affected American industry so far?

Mr. LERCH. Yes. The imports are mounting very appreciably month by month, and they are principally coming from Japan where, of course, the ratio of labor is practically—it is infinitesimal—you might say 1 to 25.

Senator MARTIN. The reason I am asking those questions, the thing that has disturbed a lot of us is that the importation of glass and china and lace, and so many of those things, they are what we call our small industries, and that is the thing that worries me more than anything else.

Our big industries like steel and automobiles and electrical appliances, it does not mean as much as it does to these small industries, because in many instances in some little towns, that is about all they have to depend upon for employment, and that is what has worried me, and I thought maybe you might have——

Mr. LERCH. That is particularly true, Senator, with respect to this toy industry and with respect to this canvas-soled shoe, although the rubber industry is a large industry. The branches of those factories are in small towns.

Senator MARTIN. It is, of course—the combination of it is a very large industry, but there is a lot of it that is in the small industries.

You know this as well as I do, you take up in Pennsylvania we have 17,000 small industries, and that is really the backbone of our economy, and when those importations destroy certain ones of those, that affects the economy quite considerably, and that is the thing that has been worrying me quite a little.

I am for the freedom of trade all over the world in order to aid in peace, that is fine; but, on the other hand, we have got to keep our own economy strong; we have got to keep our people employed, and that is why I hoped you might have some later statistics on it.

Mr. LERCH. Well, I can supplement my testimony with the statistics of various lines.

Senator MARTIN. Mr. Chairman, I am asking for some information as to what effect it had already had on some of our small industries.

Mr. LERCH. I can furnish that.

Senator MARTIN. All right.

(The information referred to is as follows:)

Escape Clause Applications

FAVORABLY ACTED UPON BY U. S. TARIFF COMMISSION

Date filed	Name of applicant	Item	Action
June 22, 1950	The Hatters' Fur Cutters Association of the U. S. A., New York, N. Y.	Hatters' fur	Investigation instituted Jan. 5, 1951 and public hearing held Feb. 6, 1951. Commission report to the President, Nov. 9, 1951, recommended withdrawal of United States concessions under GATT. Higher rates proclaimed in effect Feb. 9, 1952.
Jan. 24, 1950	The Hat Institute, Inc., New York, N. Y.; United Hatters, Cap, and Millinery Workers International Union, New York, N. Y.	Women's fur felt hats and hat bodies.	Investigation ordered Apr. 7, 1950 and hearings held May 9, 1950. Commission report to the President, Sept. 25, 1950, recommended withdrawal of United States concessions under GATT. Higher rates proclaimed in effect Dec. 1, 1950.

DISMISSED BY SPLIT VOTE OF U. S. TARIFF COMMISSION

Aug. 15, 1951	United States Wood Screw Service Bureau, New York, N. Y.	Wood screws of iron and steel.	Investigation instituted Aug. 22, 1952. Commission report to the President, Dec. 29, 1951, made no recommendations, Commissioners Brossard and Gregg dissenting.
Mar. 16, 1950	Western States Meat Packers Association, Inc., San Francisco, Calif., and Washington, D. C.	Chilled beef or veal	Application dismissed June 30, 1950, by a 3 to 3 vote of the Commission.
June 14, 1949	Sponge Industry Welfare Committee; Chamber of Commerce; Board of City Commissioners; Greek Community, Tarpon Springs, Fla.	Sponges	Application dismissed July 22, 1949. by a 3 to 3 vote of the Commission.
Mar. 28, 1949	United States Hop Growers Association, San Francisco, Calif.	Hops	Application dismissed May 11, 1949, Commissioners Brossard and Gregg dissenting.
Feb. 15, 1949	Independent Petroleum Association of America, Washington, D. C.	Crude petroleum products	Application dismissed May 3, 1949, Commissioners Brossard and Gregg dissenting.
Feb. 11, 1949	American Basque Berets, Inc., New York, N. Y.	Knitted berets	Application dismissed July 8, 1949, by a 3 to 3 vote of the Commission.
Nov. 10, 1948	The Demeritt Co., Waterbury, Vt.; Diamond Match Co., B. F. D. Division, New York, N. Y.; Forster Manufacturing Co., Farmington, Maine; Munising Wood Products Co., Chicago, Ill.; National Clothes Pin Co., Inc., Montpelier, Vt.; Penley Bros., West Paris, Maine; Wallace Corp., St. Louis, Mo.	Spring clothes pins	Investigation instituted Apr. 28, 1949 and hearing held June 1, 1949. Commission report to the President, Dec. 20, 1949, made no recommendation. Commissioner Gregg dissented.

Applications under Sec. 336 dismissed by a split vote of the U. S. Tariff Commission

Date filed	Name of applicant	Item	Action
June 18, 1951	Vitrified China Association, Inc., Washington, D. C.	Tableware and kitchenware utensils.	Application dismissed Oct. 23, 1951, Commissioners Brossard and Gregg dissenting.
Mar. 15, 1949	Olive Advisory Board, San Francisco, Calif.	Olive oil	Application dismissed May 4, 1949, Commissioner Brossard dissenting.
July 8, 1948	California Almond Growers Exchange, Sacramento, Calif.	Shelled almonds	Investigation ordered Nov. 1, 1948 and hearing held Dec. 3, 1948. Commission report to the President, Nov. 10, 1949, made no recommendation. Commissioners Brossard and Gregg dissented.

Escape clause applications before U. S. Tariff Commission

Date filed	Name of applicant	Item	Action
Apr. 10, 1952	Southwark Manufacturing Co., Camden, N. J.	Chalk	Investigation instituted Apr. 16, 1952.
Apr. 8, 1952	National P. M. U. Producers Association, Farmer City, Ill.	Estrogenic substances	Do.
Apr. 1, 1952	United States Wood Screw Service Bureau, New York, N. Y.	Wood screws of iron and steel.	Do.
Mar. 17, 1952	California Fig Institute	Dried figs	Investigation instituted Mar. 19, 1952, public hearings held Apr. 22, 1952.
Feb. 11, 1952	Vitrified China Association, Inc., and National Brotherhood of Operative Potters.	China tableware, kitchenware and utensils.	Investigation instituted Feb. 15, 1952; public hearing ordered for June 23, 1952.
Dec. 29, 1951	American Smoking Pipe Manufacturers Association	Pipes and bowls of wood or root.	Investigation instituted Jan 10, 1952; public hearings held Mar. 24, 1952.
Nov. 28, 1951	California Fish Canners Association	Tuna and bonito	Investigation instituted Dec. 28, 1951; public hearing held Jan. 29, 1952.
Oct. 26, 1951	Maraschino Cherry and Glace Fruit Association	Candied cherries	Investigation instituted Oct. 31, 1951; public hearing held Mar. 10, 1952.
Oct. 11, 1951	Bicyle Manufacturers Association of America, and the Cycle Parts and Accessories Manufacturing Association.	Bicyles and parts	Investigation instituted Oct. 15, 1952; public hearings held Apr. 3, 1952.
Oct. 8, 1951	Robert S. Stapleton, Gilroy, Calif.	Garlic	Investigation instituted Oct. 15, 1951; public hearings held Feb. 13, 1952, and Feb. 26, 1952.
Sept. 10, 1951	Massachusetts Fisheries Association, Inc., and others	Groundfish fillets	Investigation instituted Sept. 17, 1951; public hearing Nov. 26–29, 1951.
Aug. 22, 1951	Clothespin Manufacturers of America, Washington, D. C.	Spring clothespins	Investigation instituted Sept. 10, 1951; public hearing held Nov. 13, 1951.
June 11, 1951	National Cheese Institute, Inc., Chicago, Ill.	Blue-mold cheese	Investigation instituted June 29, 1951; public hearing held Apr. 14, 1952.
May 21, 1951	Harley-Davidson Motor Co., Milwaukee, Wis.	Motorcycles and parts	Investigation instituted June 29, 1951; public hearing held Sept. 18–27, 1951.
Feb. 13, 1951	Elgin National Watch Co., Elgin, Ill.; Hamilton Watch Co., Lancaster, Pa.	Watches and watch movements.	Investigation ordered and hearing held May 15-24, 1951.

Mr. LERCH. Of course, this provision which simply raises the free entry from $1 to $10 seems quite practical when you do not look at it too closely.

The Government—Mr. Johnson, I think it was, of the Treasury Department, in answer to a question of Congressman Reed about this provision, said the only reason why he wanted it in here was that the cost of administering it was far greater than the amount of revenue. Well, that seems a rather inane reason to me, because revenue from customs has long since ceased to be any material part of the budget.

Senator KERR. Is it not the fact that the cost of enforcing laws against petty larceny often exceeds the amount of the stolen article?

Mr. LERCH. And I think this is in the same category.

Senator KERR. But it would hardly be an argument to favor repeal of the laws against petty larceny, would it?

Mr. LERCH. No.

Senator KERR. You may proceed.

Mr. LERCH. But this is a promotion of petty larceny, might I say, if you adopt this section raising it to $10. It is an invitation to larceny, as I say here.

For instance, if you might bring in place settings of china or earthenware, that lets—say it would result in a hundred or a hundred and ten-piece dinner setting, you could bring them in—a place setting of rather good china or earthenware could be bought for less than $10. All you would have to do would be to bring 12 of them in.

Senator KERR. One at a time.

Mr. LERCH. One at a time; and you would have no duty.

Senator KERR. I must say that I share your feeling of concern with reference to the wisdom of such a provision. I doubt the ability, however, of anybody to successfully demonstrate that it would constitute petty larceny. I would think that there are more effective arguments against it than that, and which could be more easily substantiated. However, it is your privilege to make it on any basis that you like.

Mr. LERCH. Of course, I would not term larceny a thing which could be done under the law. Therefore, I suggest that you do not increase the ante of from $1 to $10.

Also, section 6 of this bill raises the tourist exemption to $500.

Now, I am told that under that exemption you could bring from Canada four bone china dinner services. They sell there for $125, about that, and there is no inhibition to a tourist's bringing in four of those sets, one of which would cost $500 in this country.

Mr. Chairman, I have printed here a brief, you might call it, a memorandum in which I have review the legislative history of our present provisions on value, section 402 of the present act. Those provisions have been brought down over a period of 160 years through trial and error and judicial interpretation, even by the Supreme Court of the United States, and to those of us who have dealt so closely with them, they represent just about as perfect a system of valuation as one can devise. Those are all repealed by section 13.

Not only are they repealed, but we have, as Mr. Colburn and other witnesses have said, a very lose and arbitrary system of appraisal whereby an appraiser appraising on comparable merchandise can pull

out of thin air the adjustments that he makes, and certainly he could not have——

Senator KERR. He does not even have to reach into thin air, does he, Mr. Lerch?

Mr. LERCH. Not if he has a fertile brain.

Senator KERR. All right.

Mr. LERCH. But that is exactly what I meant when in my opening statement I said to turn over to a Government official, no matter how honest he may be, that much arbitrary or discretionary power seems to me to be very dangerous and a very flimsy basis on which to base the value of our customs duties.

There is also this connected with that change over to a discretionary finding: It has been held for over a hundred years by our Supreme Court of the United States that a court will not review a discretionary power placed in the hands of a Government agency or official by Congress.

Therefore, even though ou leave in this present bill section 501 providing for an appeal to reappraisement, there is very grave doubt as to whether an appeal lies from an action under section 13 of this proposed bill for, in my judgment, and as I said in my opening statement, I have been connected very closely with this litigation, 80 percent of the appraisements would be made on comparable value as defined in section 13 of this bill because even though section 13 attempts to redefine the phrases that now appear in the statute, such as "freely offered for sale," "the usual wholesale quantities," ordinary course of trade," even with those definitions, there is a certain discretion, and when once exercised the court could not review it.

True, under section 501 you could put on a form an appeal to reappraisement, the importer's name and the proper number of the invoice or entry, and a description of the merchandise, but the minute you got into court to question the action of the appraiser, and the Government objected under the Barr decision of the Supreme Court of the United States, you would be estopped from going further. You could not review his action, so that it would be, as I intimate, an arbitrary action.

One of the things I would like to comment a little further on, that is Mr. Coburn's testimony as the conversation of the currency.

Mr. Chairman, you said it was a rather unreal set-up as proposed by section 20.

Senator KERR. I asked if it were not.

Mr. LERCH. Well, I would like to testify that it is.

Senator KERR. Very well.

Mr. LERCH. In other words, what the anomalous situation in which you find yourself as an importer is that you pay by draft the shipper by draft under on conversion of currency, and then when you come to pay duty you pay your duty on an entirely different basis.

Senator KERR. Or you might.

Mr. LERCH. You might; at least, as I read section——

Senator KERR. Under the law it could be administered to bring about that result.

Mr. LERCH. Yes, that is the point I am making.

Senator KERR. Does not make such a result mandatory, as I understand it. It permits such a result.

Mr. LERCH. Well, in the absence of the provision, the alternative provision, there for going back to the Federal Reserve bank quotations, it would be a different basis.

Senator KERR. Their valuation might be the same.

Mr. LERCH. Well, it could be, of course.

Senator KERR. Yes.

Mr. LERCH. Well, may I ask that this brief be printed as part of my remarks?

(See brief on p. 153.)

Senator KERR. Yes, sir.

Mr. LERCH. And I think that is all I have to say.

Senator KERR. All right, Mr. Lerch, we thank you.

Are there any further questions?

Mr. LERCH. Thank you, sir.

Senator KERR. Mr. Dailey?

STATEMENT OF H. WARNER DAILEY, SECRETARY, PIN CLIP AND FASTENER ASSOCIATION

Mr. DAILEY. Mr. Chairman, I wanted to state that I am the secretary of the Pin Clip and Fastener Association, and I expected that Mr. John Breckinridge would be here this morning. He is our tariff attorney, but he has been held up in a hearing before the Tariff Commission so I want to testify very briefly on this bill.

Senator KERR. Would you like permission to insert his statement in this record?

Mr. DAILEY. I would like to state that we have no written statement. This is just oral, and it is very brief on certain aspects of the legislation.

Senator KERR. Yes.

Mr. DAILEY. First, I would like to outline why we are interested in this bill. Our industry is a small industry. We are manufacturers of safety pins, straight pins, paper fasteners, and paper clips. During the postwar period the imports of safety pins and straight pins have been mounting to alarming proportions, and we are naturally interested in protecting whatever a reduced tariff rate is in effect, so that it cannot be so loosely interpreted by H. R. 5505. In other words, there are so many loopholes that we see in this bill that it doesn't matter very much what a particular tariff rate is if one can get around it by multiple exchange rate manipulation, valuation, and some of the other sections that are in the bill.

Senator KERR. In other words, your concern is that the effect of this bill would be to pratically eliminate any import duties on articles to which you refer?

Mr. DAILEY. That is it, exactly.

Senator KERR. All right.

Mr. DAILEY. In other words, you can have a fairly good protective tariff or tariff rate, and through the Customs Simplification Act you could lose its effectiveness entirely.

We have no objections to the simplification procedure of this bill. We think that probably simplification of certain customs procedure is good, but we do object strenuously to sections 2, 13, and 20.

Senator KERR. Two, thirteen, and twenty?

Mr. DAILEY. Two, thirteen and twenty, which have already been objected to by other people testifying today.

We feel that these sections don't represent a simplication as much as they represent a policy change, that is, to lower present rates, and if you cannot lower them, then, accomplish it through these sections of the bill.

Just briefly on section 2, we object to the Dumping Act procedure in which there is the injury requirement. Our past experience has been that we had a case in one of our industries where there was dumping, unquestionably. The prices at which the foreign goods were being brought into this country were considerably below the foreign market value, but we also had to prove that there was actual injury to the industry, and we never could get anywhere.

Senator KERR. In other words, you are aware of its reality but unable to make such proof of it as to secure relief from it?

Mr. DAILEY. That is true; and we would have to submit a lot of confidential data, and it would probably extend over several months, and I think that proving of injury to the industry is like saying, well, the horse has been stolen—I mean, by the time you prove it.

Senator KERR. In other words, having to prove that the patient was ill of a malady which if not checked would be fatal before you could get medical relief.

Mr. DAILEY. Exactly.

Senator KERR. And during which time it would have had it full effect.

Mr. DAILEY. That is right.

In connection with section 13, the valuation, from our experience, the export value is of a lower value than the foreign value appears to be in practice, and if the valuation is based upon the export value it means that you just have that much lower base on which your ad valorem tariffs will operate. I believe Mr. John Breckinridge has filed an almond brief with this committee, and as a case in point I know that in the almond case, almonds were offered for 37 cents a pound whereon the foreign value were 97 cents, so you can see how you can get around tariff protection from this angle.

Senator KERR. What you are saying is that this is not a simplification bill——

Mr. DAILEY. Yes, sir.

Senator KERR. But a bill that emasculates import duties.

Mr. DAILEY. Absolutely. It is just a smoke screen for a different policy on our foreign trade.

The Comparative-value basis was discussed and, of course, we are heartily in accord with previous testimony against it. I believe it leaves far too much power to the customs appraiser who is going to follow through on that.

The conversion of currency in section 20, a great deal has already been said on that, and I will not add very much more except to say that through multiple exchange rates I think you can accomplish anything you want to if you are a foreign country wanting to exploit our domestic markets.

For example, I was informed that the present official rate of one of the countries exporting almonds to us, Spain, was 10.95 pesetas per dollar, but so far as the almond exports went, the rate for that, if we

had a multiple rate, could be 21 pesetas per dollar. In other words, you see, you can cheapen your currency for whatever goods you want to ship to this country.

I have not gone into the technical details of this bill because I am not a lawyer, but I am expressing how the industry I represent feels about this bill.

Senator KERR. You are telling us what you believe to be the practical results of it if it were enacted.

Mr. DAILEY. That is right.

Senator KERR. All right, Mr. Dailey, we thank you for your appearance and thank you for what you have said.

Mr. DAILEY. Thank you, sir.

Senator KERR. Mr. Martin? All right, Mr. Martin.

STATEMENT OF ROBERT F. MARTIN, EXECUTIVE SECRETARY, VITRIFIED CHINA ASSOCIATION

Mr. MARTIN. Mr. Chairman, I am Robert F. Martin, executive secretary of the Vitrified China Association, 517 Wyatt Building, Washington, D. C.

Yesterday, a representative of the Staffordshire Potters of England appeared before you to demand that foreign value be included in section 13 of H. R. 5505 or that "the bill should be defeated and the existing law left in its present form."

Such a drastic demand from foreign sources as to how we shall administer our tariff is rather unusual and calls for careful examination.

1. Difficulties of determining foreign value under conditions such as exist in the case of English china at present were one of the reasons for eliminating this value from the provisions in this bill in the attempt to simplify administration.

In support of the present foreign value the Staffordshire Potters claim that it is "feasible * * * simple, and direct, namely the price at which these products are offered for home consumption in the United Kingdom."

Here are the actual conditions under which it is claimed that this method is feasible. For some years now the British Government has prohibited the sale of decorated china in the United Kingdom. Over 99 percent of United States imports of Staffordshire china are decorated. Just how the foreign-value price can be feasibly, simply, and directly determined by obtaining the price at which it is offered for home consumption in the United Kingdom, when such sale is prohibited by law, is indeed a mystery.

2. It being in practice impossible to determine the foreign value reasonably in this case, the door is left open for just the sort of juggling that section 13 of this bill is trying to eliminate. Some of the exclusive United States importers are branches of the Staffordshire firms. With no sales of the exported patterns made in the United Kingdom on which it check, it is possible for them to ship to the United States branches at a very low value, in consequence pay a very low ad valorem duty, and take the mark-up and profit in the United States. The elimination of foreign value would, at least in part, close this door and simplify administration.

3. The recent erection of drastic trade barriers by Australia has caused a situated described by the London Economist of April 19, 1952, as follows:

> The size of the import cuts and the speed with which they have been imposed mean that British manufacturers are left with appreciable stocks of specially designed pottery that cannot be diverted to other export markets, in spite of the Government exhortations to do so. It seems, therefore, as if the home market may at last obtain a release of decorated pottery in the form of these frustrated exports; even so, some members of the industry are doubtful of its ability to absorb more than a limited quantity.

My reason for mentioning this is so that you will know that any relaxation in the ban on sale of decorated china in England in the near future is for a special limited purpose and would not include the china covered in the discussion under item 1 above.

I would like to add in this connection, I call your attention to the confirmation in general of the situation I have described specifically in the case of decorated china from the United Kingdom by a previous witness with wide experience as a customs attorney dealing with this matter, Mr. Coburn, who said, and I quote:

> Many of the delays which have occurred have, as has been pointed out, been due to the difficulties of ascertaining a market value in the country of exportation, that is, a so-called foreign value. With removal of foreign value as a basis of dutiable value and the other changes in the proposed section 13 calculated to simplify the determination of a proper dutiable value of imported merchandise, no reason would exist any longer for the interminable delays which now occur in obtaining appraisement action.

In conclusion I submit that the claim of the witness for the Staffordshire potters that—

> the repeal of foreign value would result in leaving the appraisement of our products up in the air—

is contrary to the fact, that I have shown that this is properly descriptive of the situation as it is now under foreign value, which the Staffordshire potters desire continued, and I respectfully suggest that their demand that section 13 be amended as they desire or the entire bill be killed, is without merit and that it be rejected.

Senator KERR. May I ask now specifically what your recommendation is?

Mr. MARTIN. Our recommendation is that the bill be passed without the inclusion of the foreign value, which is now eliminated under the present form of the bill, sir. That has been eliminated under the present form of the bill.

Senator KERR. Is that all?

Mr. MARTIN. Yes, sir.

Senator KERR. We thank you for your statement.

Mr. MARTIN. Thank you, sir.

Senator KERR. Mr. Pinkussohn?

STATEMENT OF LEWIS A. PINKUSSOHN, JR., ASSISTANT SECRETARY, CAMILLUS CUTLERY CO.

Mr. PINKUSSOHN. Mr. Chairman, I am Lewis A. Pinkussohn, Jr., assistant secretary of the Camillus Cutlery Co., and I live in New York City.

98600—52——12

I would like to thank you for permission to appear. As you know, Mr. Alfred B. Kastor, the chairman of our board, had intended to appear here before you. Mr. Kastor has not enjoyed the best of health for the past few years and he felt that the effort of a trip to Washington and an appearance before this committee at his age would be too much of a strain.

You will recall the testimony of Mr. Robert N. Kastor when he appeared before you on March 2, 1951, regarding the Trade Agreements Extension Act.

Senator KERR. I remember he brought some samples of cutlery, if I'm not mistaken.

Mr. PINKUSSOHN. That is right, sir; he had plaques on which he had fighting knives and pocket knives.

Senator KERR. That is right.

Mr. PINKUSSOHN. When Mr. Robert N. Kastor testified on March 2, 1951, Camillus Cutlery Co. was employing 450 people. Then came Torquay—and a reduction in duties, as you Senators know, of 50 percent. This was almost the K. O. for Camillus.

The last payroll report for the week ending April 15, 1952, shows that we have only 317 employees, and if this so-called Simplification Act is passed and the marking proviso is deleted as has been suggested, our employment will be cut another 25 percent within 1 year—and within 3 to 5 years we may be driven out of business. It is to be noted that the town of Camillus, its bank, its property values, are all dependent on the Camillus Cutlery Co., as we are the only industry located there, a small suburb 9 miles west of Syracuse. Also, I would say that the majority of all the cutlery companies are also located in New York State, Pennsylvania, and New England, and so forth.

This remark is not said facetiously. Mr. Kastor has told me that he has had 46 years of continuous experience in this business, and it is his well-considered opinion that this unfortunate situation will ensue if the marking proviso is deleted.

Senator KERR. If what?

Mr. PINKUSSOHN. If the marking proviso is deleted from our particular section, paragraph 354, dealing with pocket knives, and 355, dealing with household cutlery.

He feels that his opinion is worthy of more respect and attention than the opinion so glibly expressed in the hearings before the Committee on Ways and Means by the Treasury Department, namely, Messrs. John S. Graham, Assistant Secretary, and Philip Nichols, Jr., assistant general counsel.

Senator KERR. You take the position that their lack of experience either in the production and marketing of these items is a matter that should be given consideration in appraising the value of their testimony?

Mr. PINKUSSOHN. Agreed, sir.

Their testimony in our opinion was specious, misleading, and fatuous.

The crux of the matter can be very briefly stated.

It is proposed to delete from paragraph 354 the following and I quote:

Provided further, That all the articles specified in this paragraph, when imported, shall have the name of the maker or purchaser and beneath the same the name

of the country of origin die-sunk conspicuously and indelibly on the shank or tang of at least one or, if practicable, each and every blade thereof.

This exact wording of this proviso has been a part of the Tariff Acts of 1930, 1922, 1913, and 1909.

Its main objective was to prevent deceit and fraud so that the purchaser of pocket knives would know not only the name of the country but also the name of either the maker abroad or the purchaser—and this was itself a guarantee of a certain standard and quality as no maker or purchaser would let his name appear on a corrupt piece of merchandise. That was just common sense.

It is worth while noting that there is not a single manufacturer of cutlery in England, Germany, or Japan of any note or repute who does not understand to the fullest extent these branding requirements. It is only those who would transgress our customs laws who plead ignorance.

I would also like to state that it is no hardship, either abroad or domestically, to put your name or your brand or country of origin on your merchandise. I know of no domestic manufacturer, whether he turns out the most expensive item or the cheapest item, that will turn out any merchandise whatsoever without his name or brand conspicuously die-sunk on the tang.

Senator KERR. You figure if he is so ashamed of it that——

Mr. PINKUSSOHN. Something must be wrong with it.

Senator KERR (continuing). That maybe we ought to look on it with some caution?

Mr. PINKUSSOHN. That was the original reason, I believe, for putting the marking proviso on the statute books in the customs law of 1909.

In conclusion, we wish to state that we are not against bona fide simplification of customs administration and procedures. We are, however, definitely opposed to section 3 of the bill which does not simplify but which repeals the special marking requirements for cutlery in paragraphs 354 and 355 and vitally affects the livelihood of American cutlery workers. I ask that the letter which Mr. Alfred B. Kastor wrote to each Member of the Senate, dated April 15, 1952, be made a part of the record without my taking the time of your committee to read it.

Senator KERR. Very well.

Mr. PINKUSSOHN. That is all I have, sir.

Senator KERR. Are you familiar with section 11 of the proposed bill?

Mr. PINKUSSOHN. No, sir; I am not.

Senator KERR. Which raises the $1 exemption in existing law to $10 on merchandise received from a foreign country by mail?

Mr. PINKUSSOHN. I am not familiar with it, sir.

Senator KERR. I would think maybe you would have some concern with that section.

Mr. PINKUSSOHN. No, sir; we do not.

Senator KERR. All right, Mr. Pinkussohn.

Mr. PINKUSSOHN. We thank you.

(The letter previously referred to, from Mr. Alfred B. Kastor, is as follows:)

CAMILLUS CUTLERY CO.
Camillus, N. Y.

NEW YORK, N. Y., *April 15, 1952.*

Under the guise of a bill to simplify customs administration and procedures, H. R. 5505 has been passed by the House. This omnibus bill is a misnomer. It would in fact destroy the tariff regulations that created the strength of the cutlery industry.

Because this bill is now before the Senate this letter is sent to you.

One of the chief objections to the bill is its repeal marking provisions that have been in the tariff law for 30 years. This is not simplification but destruction.

The marking requirements specify that the maker's or importer's name along with the country of origin must be indelibly die-sunk on the tangs of all knife blades. This information protects the consumer. It accords with the principle of honest labeling of merchandise which began with the Pure Food and Drug Act and has extended to the Wool Products Labeling Act.

This information for the consumer also protects the domestic manufacturer in marketing goods of superior quality. If it is allowed to be rubber-stamped or lightly etched, it can be easily removed and a deceit will be practiced on the consumer. Is this simplification?

The bill goes further. It would eliminate the name of the foreign manufacturer or the importer and thus deprive the purchaser of a guaranty of redress in the case of inferior merchandise. Yes, this is simplification with a vengeance.

The cutlery industry of this country is a creation of the Tariff Act of 1890. The marking provisos came as the studious result of years of experience and thought. They were embodied in the Tariff Act of 1909, retained in the tariff of 1913, again in the tariff of 1922, and again in the tariff of 1930. Under these laws the industry has lived and grown, developing techniques that enabled it to stand alongside other essential industries and produce large quantities of war material such as essential pocket knives, surgical knives, and fixed-blade fighting knives at the beginning of World War II.

Even now the ideas that stemmed from the Torquay conference and slashed cutlery duties 50 percent have resulted in a flood of imports from Japan, Germany, etc., and caused grave unemployment in the cutlery towns of America. The new proposal would wipe out this reduced production and make them ghost towns in a few years.

And yet, when this bill was reported by the House Ways and Means Committee, it was spuriously described as "entirely procedural in nature."

There is time to stop this last blow of destruction. If some customs procedures need to be improved, let them be studied carefully, after the elections. Let us not be hoodwinked by the false face of vicious legislation.

Very truly yours,

CAMILLUS CUTLERY CO.,
ALFRED B. KASTOR,
Chairman of the Board.

Senator KERR. Mr. Mercer, sit right down and make yourself comfortable.

STATEMENT OF WALTER J. MERCER, PRESIDENT, HUDSON SHIPPING CO., INC.

Mr. MERCER. Mr. Chairman, my name is Walter J. Mercer. I am president of the Hudson Shiping Co., Inc., customhouse brokers and foreign freight forwarders, and I am a director in the American Chamber of Commerce for Trade With Italy, Inc., for whom I am now making this statement.

I have already submitted a statement which I would request to be incorporated in the record.

Senator KERR. Very well.

Mr. MERCER. This is in connection with some oral remarks I will make now.

My organization feels and believes that world trade is a two-way street; that so long as our exports exceed our imports that our economy is in more or less safe hands.

On this premise they endeavor to promote trade between European nations and the United States.

In view of the time restrictions, I shall endeavor to be brief and talk upon only one phase of the customs-simplification bill, H. R. 5505, that being section 17 of said proposed bill.

Subsection A of this amendment would eliminate the present law which authorizes the amendment of entries by either increasing or decreasing the entered value at any time before the appraisement of the merchandise. In order that the committee may properly consider this section, I wish to go on record as saying that all import organizations which I know of—customs brokers' associations and even the Bar Association of Customs Attorneys— are strenuously opposed to this section. We do not believe that in proposing same that the Treasury Department realizes that innocent persons can be severely penalized for undervaluation or fail to obtain allowances or refunds in the event the merchandise was entered at a higher value than the proper dutiable value.

At the present time—and the practice would continue under the provisions of the proposed bill—that before an importer can make an entry of merchandise paying an ad valorem rate of duty, he must first submit to the examiner, prior to entry, his consular invoice, commercial invoice, contracts, orders, price lists, quotations, correspondence, and all other documents or information in his possession at that time.

He must set forth in a submission sheet a full description of the merchandise, the invoice price, the date of order, the date of subsequent orders, and their dates of acceptance and prices; also, subsequent quotations up to the date of submission, the date of such quotations, and their prices.

The appraiser then would advise of a tentative value at which the entry can be made, and if, at the time of appraisement, the appraised value is higher or lower, the collector of customs would not follow the appraiser's findings in respect to liquidating at a lower price or penalizing where the value is higher if the examiner reports that in his opinion all of the requirements as set forth above were not complied with.

In other words, the examiner would be the sole judge in such matters, and, as an example, an importer may receive quotations from several sources abroad—all of which he is not interested in and would cast aside. The appraiser may have information from said manufacturers that he sent those quotations to the importer, and if the importer did not, in his submission, bring same to the attention of the examiner, then said importer would either be subject to penalty in the event of an advanced value or denied a refund in the event of appraisement made at a lower value.

Naturally, where there would be a penalty, there would be appeals for either reappraisement or remission of the penalty, which, in the writer's opinion, would jam the court calendars of the already overburdened customs courts.

I, therefore, appeal to this committee to disregard this section of the bill entirely, as it does not tend to simplify but only to confuse.

Senator KERR. What you are saying is that you are requesting that that section of the bill——

Mr. MERCER. Be stricken.

Senator KERR (continuing). Be stricken.

Mr. MERCER. Right. It serves no useful purpose.

Senator KERR. Do you have any comment on the testimony of some people here with reference to the time in which appraisals must be made?

Mr. MERCER. Yes, I believe there should be a reasonable time during which an importer may be in a position to calculate just what his duties are, so he can apply it to the cost of his goods.

There are some appraisements which have been withheld 4, 5, 6 years, and an importer today does not even know what his duties are going to be because of the withheld appraisement.

I would like to add, Senator, that previous information which was just testified to in respect to the Canadian invoice, where it was said that the Canadians have in their invoice a column which sets forth the fair market price to give the Canadian authorities a basis for assessing their duties as between the purchase and the fair market price, well, our consular invoice is even more effective because we have a column 11 on that invoice which sets forth the home market value for that particular shipment.

Senator KERR. Sets forth what?

Mr. MERCER. Sets forth the home market value of the merchandise covered in that invoice; and furthermore, the Canadian invoice is not a sworn document, but the American consular invoice is. I am just passing that out for the information of the committee.

Senator KERR. You take the position that the situation should be maintained as it is now with reference to that?

Mr. MERCER. Section 17, yes.

Senator KERR. Well, that would be the effect of deleting section 17?

Mr. MERCER. That is right.

Senator KERR. All right, Mr. Mercer.

Mr. MERCER. Thank you very much for permission to appear before you.

Senator KERR. We thank you.

(The prepared statement of Mr. Mercer is as follows:)

STATEMENT OF WALTER J. MERCER, DIRECTOR IN THE AMERICAN CHAMBER OF COMMERCE FOR TRADE WITH ITALY, INC., NEW YORK, N. Y., RE CUSTOMS SIMPLIFICATION ACT OF 1951

My name is Walter J. Mercer. I am the president of the Hudson Shipping Co., Inc., 8–10 Bridge Street, customhouse brokers and foreign freight forwarders, established 1893. I am a director in the American Chamber of Commerce for Trade With Italy, Inc., 105 Hudson Street, New York 13, N. Y. I am making this statement as their representative.

This chamber which was established in 1887, has as its prime purpose the developing and fostering of trade between the United States and Italy. An overwhelming majority of its members are American businessmen engaged in either importing or exporting or both. Its members are located principally in the New York area. The chamber is deeply concerned with legislation affecting the foreign trade of this country. Our members look to this association for information regarding any change in rules or regulations, tariff, etc., especially any legislation which may tend to provide relief from the numerous provisions which an importer must comply with in effecting clearance through customs.

The purpose of H. R. 1535, as stated by the Treasury Department, is to amend the Tariff Act of 1930, as amended, in order to simplify its operation, to reduce

expenses and delay incidental to its administration, and to eliminate inequities whch add to the difficulties of enforcement. The business of importing today represents an endless list of regulations, requirements, and difficulties, many of which can be eliminated to permit a freer flow of merchandise into this country, and thereby promote better trade conditions with the countries throughout the world.

We are in accord with the principle and purpose as outlined in the new Customs Simplification Act of 1951, with certain exceptions. However, we feel that the act does not go far enough in providing the relief which its purposes indicate.

Section 13 of the proposed bill: The elimination of "foreign value" and "American selling price," as a basis for determining dutiable value should result in a considerable saving of time on the part of the customs examiner as it narrows down the considerations in arriving at dutiable value. We feel, however, that the proposal is defective in the following two respects:

(1) The appraiser should definitely state in his final appraisement what his basis of value, i. e., "export value," "United States value," etc.

(2) There should be a definite time limitation within which the appraiser should complete his appraisement.

Section 16 of the proposed bill: We are strenuously opposed to the proposed changes in this section unless they are restricted to noncommercial shipments.

Section 17 of the proposed bill: Subsection (A) this amendment would eliminate the present law which authorizes amendment of entries to increase or decrease the entered value at any time before the appraisement of the merchandise. We vigorously object to this proposal for the following reasons. This proposal would abolish the right of amendment of an entry under any circumstances once an entry has been made. It is too harsh and also entirely unnecessary. There are situations where, from the point of view of the Government, of the customhouse brokers, and of the importer, it would be salutary to permit amendment of entries. Without the right to amend the entry, the additional duties provided for in this section may well be imposed on an innocent person who, if permitted to amend his entry, could have avoided these additional duties and yet paid to the Government what was lawfully due.

We believe that the concept of additional duties is wrong and it should be discarded entirely. If there is an honest dispute between an importer and the Government, the dispute should be resolved in the proper forum without any penalty. If an importer commits fraud or deceit, there are other provisions in the law which amply punish him, either through criminal prosecution or civil penalties against him personally or against the goods imported.

We believe the foregoing observations represent the consensus of the opinion of our asociation insofar as it relates to importing. And it is for this reason that we respectfully present them to the committee for consideration.

Senator KERR. The committee will recess until 10 o'clock in the morning.

(Whereupon, at 12: 30 p. m., the committee recessed to reconvene at 10 a. m. Friday, April 25, 1952.)

CUSTOMS SIMPLIFICATION ACT

FRIDAY, APRIL 25, 1952

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 312, Senate Office Building, Senator Spessard L. Holland presiding.

Present: Senator Holland.

Also present: Elizabeth B. Springer, chief clerk, and Serge N. Benson, professional staff member.

Senator HOLLAND. The committee will come to order.

Senator George has asked me to preside briefly this morning for the purpose of proceeding with the hearing begun some time ago under the Customs Simplification Act as proposed in H. R. 5505. I understand that there are several witnesses here.

I will call them in the order that their names are listed here.

Mr. Eugene R. Pickrell of the Carbic Color & Chemical Co., Inc.

Mr. Pickrell?

STATEMENT OF EUGENE R. PICKRELL, REPRESENTING CARBIC COLOR & CHEMICAL CO., INC., AND SANDOZ CHEMICAL WORKS, INC.

Mr. PICKRELL. Mr. Chairman and members of the committee, my name is Eugene R. Pickrell. I am an attorney at law, with offices at 10 East Fortieth Street, New York, N. Y. I specialize in customs, tariff, and Federal matters, and have been engaged in such practice for upward of 20 years. I have been admitted to practice before the courts of record of the State of New York, United States Customs Court, United States Court of Customs and Patent Appeals, and other Federal courts. I was formerly chief chemist of the United States Customs Service, port of New York. Since the Tariff Act of 1922 was enacted by Congress, I have handled matters relating to importations of coal-tar products before the United States Customs officials and before the United States Customs Court and before the United States Court of Customs and Patent Appeals.

I appear before this committee in behalf of my clients, Carbic Color & Chemical Co., Inc., and Sandoz Chemical Works, Inc., importers of coal-tar dyes, coal-tar intermediates, and coal-tar auxiliaries, with offices located at, respectively, 451–453 Washington Street, New York, N. Y., and 61 Van Dam Street, New York, N. Y.

I wish to direct my few remarks to section 17 (a) of H. R. 5505. Section 17 (a) of the bill deletes from section 487 of the Tariff Act of 1930 the following phrase:

or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisement.

Section 487 of the Tariff Act of 1930 permits the amendment of customs entries at any time prior to appraisement. The deletion of the above-mentioned provision in section 487 of the statute eliminates this right to amend customs entries.

Under the provisions of paragraphs 27 and 28 of the Tariff Act of 1930, the ad valorem duties on all coal-tar products are based on either United States value or American selling price, depending on whether or not the imported coal-tar product is competitive with a similar domestic product. If it is competitive, the ad valorem rate of duty is based on the selling price, known as the American selling price, in the United States of a comparable domestic product. If it is not competitive, the ad valorem duty is based on United States value which is defined in section 402 (e) of the present statute.

There are only two or three classes of products other than coal-tar products upon which the ad valorem rates of duty are assessed on the American selling price. The ad valorem duties on all other classes of merchandise are based on either foreign value or export value, whichever is the higher. In the absence of these two bases, then it is based on United States value, and in the absence of foreign value, export value and United States value, then on cost of production.

In the determination of whether or not the ad valorem rate of duty on an imported coal-tar product should be based on United States value or American selling price and, if the latter, the amount of same, it is necessary to make tests for a comparison of such imported coal-tar products with domestic coal-tar products.

The present procedure in making customs entry, amendment of such entry, and appraisement of coal-tar products may be illustrated by an importation of a coal-tar dye.

When an importer, such as my clients, receives a consular invoice covering an importation of coal-tar dye—and such invoice usually covers six or more coal-tar dyes—he submits a copy of same, together with a submission sheet, requesting information as to the proper dutiable values, to the United States appraiser at the port of entry prior to making customs entry. On the submission sheet he advises the United States appraiser as to whether or not each of the coal-tar dyes is competitive or noncompetitive; if noncompetitive the United States value and if competitive the American selling price. The United States appraiser informs him in writing on the submission sheet which of the coal-tar dyes he considers competitive, which noncompetitive, the United States values for the noncompetitive coal-tar dyes, and the American selling prices for coal-tar dyes which are competitive.

If the United States appraiser has no definite information on any one of the coal-tar dyes, he advises the importer on the submission sheet that he is going to test that dye and later, which is usually after a lapse of 4 to 8 weeks, the United States appraiser advises the importer as to whether the dye marked "test" is competitive or noncompetitive and the United States value or American selling price.

The importer checks the information given to him by the United States appraiser on the submission sheet and, if he is in agreement and there are no dyes to be tested, he makes customs entry in accordance with this information. If he is not in agreement, he makes entry according to his own information and recalls the invoice so he can amend the entry at a later date, after he has made his test, checked the information given to him by the appraiser and conferred with the latter in an endeavor to reach an agreement. If he reaches an agreement and it is different from his original entry, he amends the entry accordingly. If he does not reach an agreement, he advises the United States appraiser to appraise, and then he files his appeal for reappraisement, which is sent by the United States collector of customs to the United States Customs Court for adjudication.

This has been the procedure on importations of coal-tar products since the enactment by Congress of the Tariff Act of 1922; in other words, 30 years. This practice is pursuant to the provisions of section 487 of the present statute. It has been very satisfactory to importers of coal-tar products, and as a result, there has been comparatively little litigation. I understand that there are approximately 3,000 entries per year at the port of New York, covering coal-tar products and that the amendments of such entries are approximately 10 percent, or 300 customs entries.

My clients and other importers of coal-tar products are very disturbed over the possibility of the elimination in this bill of the legal right to amend customs entries covering importations of coal-tar products, and further elimination of a satisfactory procedure which has been in effect for 30 years. These importers of coal-tar products object to an elimination of a legal right and the substitution therefor of an administrative practice, subject to the notions, the whims and the personal feelings of administrative officials.

The proponents of the elimination of the right to amend customs entries have given as their reason the amount of paper work entailed in the amendment of customs entries. As far as coal-tar products are concerned, the paper work at the port of New York is very small and only amounts to amendments of about 300 customs entries per year.

Frequently there are importations of coal-tar dyes, coal-tar intermediates, coal-tar auxiliaries, and coal-tar pharmaceuticals that have never been imported before; so at the time of entry the importer probably has some knowledge as to whether or not such imported product is competitive or noncompetitive and, if competitive, the American selling price, but this information is insufficient to warrant making customs entry with certainty. He must rely on information obtained from the appraiser and information that he obtains subsequent to importation, pursuant to investigation. In such instances it is imperative that he have the right to amend customs entries covering importations of such new products.

There is always a risk in the importation of coal-tar products which have been previously regarded as noncompetitive. Frequently it happens that between the date of placement of an order for an importation of a noncompetitive coal-tar product from abroad and the date of exportation of such product, it has become competitive without knowledge of the importer. The ad valorem rate of duty will then be assessed on the American selling price. The importer had sold the

coal-tar product prior to importation at a price which included the lower duty based upon its noncompetitive status. He is forced to pay a higher duty, which is usually twice the lower duty, based on the American selling price, and thereby suffers a loss in the transaction.

The denial of the right to amend customs entries covering importations of coal-tar products will probably increase litigation as to the dutiable value on such merchandise before the United States Customs Court and the United States Court of Customs and Patent Appeals.

The importation of coal-tar products is a hazardous enterprise. To deny importers the right to amend their customs entries will make the importations more hazardous and create additional difficulties. The elimination of paper work in the amendment of only 300 customs entries per year at the port of New York is an unfair compensation for the additional hazards and difficulties created by the denial to amend entries of such products.

I thank you very much.

Senator HOLLAND. Mr. Pickrell, of course you have seen the report of the committee of the House of Representatives on this bill.

Mr. PICKRELL. Yes.

Senator HOLLAND. I note that on pages 16 and 17 of the report which covered this particular section 17 of the bill, H. R. 5505, in particular with the third paragraph, this statement:

> The customs regulations permit appraisers to supply information to importers as to contemplated advances in value, if they have cooperated and supplied all relevant information available to them, so that by prompt amendment increasing the entered value to the undervaluation duty can be avoided.

Mr. PICKRELL. Yes, sir.

Senator HOLLAND. Will you comment on that statement in the report?

Mr. PICKRELL. In section 17 in the bill it provides that provided the importer confers with the appraiser prior to making customs entry and furnishes all available information that he has and the appraiser reports this to the collector and the appraiser reports that he is of the opinion that the importer has conferred and collaborated, then there will be no assessment of additional duties. You are subject there to the notions, to the whims, to the feelings of one official in this report. He may not like this importer. They might have had some difficulties in the past. He could make an unfavorable report. Then there will be an assessment of these additional duties.

This is an administrative practice. Here we have a legal right to amend an entry. That legal right is taken away from us and we are given an administrative practice which is subject to the notions and whims of the administrative officials.

Senator HOLLAND. I note in the later portions of that same section of the report it dwells upon the other amendments to section 489 and to section 501 and to section 503 of the tariff act, and the committee evidently—the Ways and Means Committee—was of the opinion that those amendments contributed to the fact that the proposed H. R. 5505 was such in all of its provisions on this point as to make unnecessary the power of amendment as it has existed under present law. What comments do you make on that?

Mr. PICKRELL. In my opinion, it doesn't. Those amendments are very reasonable and fair and equitable amendments. In other words,

this amendment in 501, 503—I think it is 501—eliminates the entered or appraised value, whichever is the higher, and makes it the appraised value only. If there is an error on the part of the importer, under the present statute, and that error is not detected by the appraiser. In other words, if the importer enters at a higher value than he should have entered and he doesn't ascertain this mistake or error until after the merchandise is appraised, it is going to be appraised as entered and he is paying too high duties. That eliminates situations of that kind, and that is a very fair amendment.

But that doesn't take care of this situation, the right to amend. I would like to give you this comment on this deletion of the right to amend as far as it affects merchandise other than coal tar products.

We have now in this bill four new bases of value different from what we have in our present statute. This bill does away with foreign value, which is an excellent feature. It rewrites the definition of export value. It rewrites the definition of United States value. It has a new value called comparative value. It has also rewritten the definition of cost of production and has designated it as constructive value.

You really have four new definitions of bases of value, which will probably take 2 or 3 years before everybody knows just exactly what those definitions mean. It will require legal interpretation by the United States Customs Court and the United States Court of Customs and Patent Appeals.

It took 2 and 3 years of adjudication before the definitions of the United States value and American selling price in the Tariff Act of 1922 as applicable to coal-tar products were legally defined and interpreted. During a similar time you are going to have uncertainty as to what these new bases of value mean, and during that time there should be the right to amend customs entries.

Today we have a practice that is very clear. It is very definite. It has been in effect for 30 years. Importers know how to operate under it.

Senator HOLLAND. Well, let's see if I understand your situation, and see if I can state it briefly. You feel that the amendments in the entry provided by present law, to increase or decrease the entered value at any time before the appraisement of the merchandise, which amendments would eliminate that right of amending the entry, although they do represent a saving in the paper work on the side of the Customs Service, do not represent any sufficiently substantial saving to offset the added hazards and added work placed upon importers, and should not be passed for that reason; is that right?

Mr. PICKRELL. Senator, that is exactly my position.

Senator HOLLAND. All right, sir. Thank you very much.

Mr. R. W. Hooker?

Before you start, Mr. Hooker, I am asked to announce that when we recess today the hearing will be recessed until 10 a. m. next Monday.

I am also asked to announce that the National Council of Farmer Cooperatives has expressed its opinion upon this legislation by a letter addressed to Senator George, dated April 23, 1952, which letter I now incorporate in the record.

(The letter referred to is as follows:)

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington 6, D. C., April 23, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance, United States Senate,
Washington 25, D. C.

DEAR SENATOR GEORGE: The National Council of Farmer Cooperatives at the annual meeting of delegates, in January 1952, approved the following statement of policy on the question of simplification of customs procedures which is now before your committee:

"We believe that legislation aimed to simplify customs procedures should be confined exactly to the attainment of that objective, and should not be used to effect substantive changes in our tariff system or our protection against subterfuge by foreign countries in their attempts to defeat the purposes of our protective devices."

It is our feeling therefore that section 20 of H. R. 5035 should be deleted, because it ties the conversion value of the United States currency to foreign currencies, which are managed in the interest of fictitious values. These are not supported by sound economies and fiscal policies. They are devices which penetrate the American economy with unsound trade policies and they will undermine it if allowed to persist.

It is our belief that foreign trade is not an end in itself, but is a means of bringing to us excess goods from foreign shores which we need and can afford and which they do not need; and of shipping to foreign shores surplus goods which they need and can afford, and which we do not need. Too often our markets have attracted goods from other countries which their people needed or their neighbors needed in order to improve their standard of living, but which those in authority turned into dollars for their own purposes rather than the welfare of their people. The managed currency is a favorite device for this purpose, and values can only be brought to reality by maintaining the free New York market as the basis of currency conversion.

Section 22 of H. R. 5505 should also be deleted. This relates to a unilateral phase of domestic policy which should be kept under the control of the Congress. It should not become a question to be settled by international bargaining in which tangible economic values can be traded for intangibles without recourse.

I should like to call your attention to the United States export and import figures for 12 months through January 1952. The data shows that agricultural imports were 48 percent of our total imports for 12 months while our agricultural exports were only 28 percent of our total exports for the same period.

Agricultural imports were $5,092 million as compared to agricultural exports of about $4,162 million. Are we consciously developing an unbalanced industrial economy, importing predominantly our raw materials, including agricultural products, and exporting predominantly industrial products? If so, this was the downfall of the European economy and political stability.

Sincerely yours,

JOHN J. RIGGLE,
Assistant Secretary.

STATEMENT OF R. W. HOOKER, SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION, AND THE MANUFACTURING CHEMISTS ASSOCIATION

Mr. HOOKER. Mr. Chairman, my name is R. W. Hooker. I am vice president in charge of sales of the Hooker Electrochemical Co., of Niagara Falls, N. Y. I am here on behalf of the Synthetic Organic Chemical Manufacturers Association and the Manufacturing Chemists Association, Inc.

These two associations together represent the great bulk, perhaps 90 percent of the American chemical industry.

Our request to be heard was contingent upon any attempt to reinstate the original section 14, that provision of the original bill which would have nullified American selling price as a basis for valuation.

As these hearings have developed, no such attempt has been made. In fact, Mr. Graham, speaking for the Treasury Department, stated specifically—and I quote:

> There were two provisions in the original bill which apparently caused some concern to certain elements of American industry. Briefly, these two provisions related to what is known as the American selling price method of valuation and the basis for taxing distilled spirits. Both were eliminated by the House. Although such provisions had the merit of producing simplification by bringing about uniformity in customs administration, the Treasury does not propose that they be reinstated in the bill by this committee.

We take exception to the statement that the elimination of American selling price as a basis of valuation would have the merit of producing simplification by bringing about uniformity in customs administration.

Senator HOLLAND. Just a minute, please, sir. As I understand it, these two provisions which you are discussing were both eliminated by the House.

Mr. HOOKER. Yes, sir.

Senator HOLLAND. They do not now appear in the House bill that is being considered by this Senate committee?

Mr. HOOKER. This is Mr. Graham's recommendation of the Treasury; yes, sir.

Senator HOLLAND. What is the purpose of your appearance here, since these provisions are not now in the bill?

Mr. HOOKER. One purpose, sir, is to do this committee the courtesy of appearing, since they had been courteous enough to allow us to come, and we, not knowing the testimony which would be given previous to ours, not knowing until this minute what the testimony would be previous to ours, we did wish to go on record as appearing here.

We also wished to go on record as making an exception to that portion of Mr. Graham's testimony where he said that American selling price as a basis of valuation would have the merit of producing simplification by bringing about uniformity in customs administration.

The fact is that it is our opinion, as set forth in our briefs and statements before the Ways and Means Committee, that elimination of American selling price would unduly complicate rather than simplify customs administration. However, we are gratified to know that the Treasury has seen fit to abide by the Ways and Means Committee decision to retain American selling price as a basis of valuation. Therefore, we are closing our statement at this time and wish to thank the committee for scheduling our appearance.

Senator HOLLAND. Let's see if I understand you. You are glad that the Ways and Means Committee eliminated these two sections?

Mr. HOOKER. Yes.

Senator HOLLAND. You are glad the Treasury approved that elimination?

Mr. HOOKER. Yes, sir.

Senator HOLLAND. And you want the Senate committee to know that you approve of the actions of the Ways and Means Committee and of the Treasury?

Mr. HOOKER. Yes, sir.

Senator HOLLAND. Thank you.

Howard Huston?

STATEMENT OF HOWARD HUSTON, AMERICAN CYANAMID CO.

Mr. HUSTON. Mr. Chairman, my name is Howard Huston. I am a vice president of the American Cyanamid Co.

The particular provisions upon which I proposed to present evidence this morning has since the hearing started beeen very ably handled by other witnesses and therefore, sir, with the permission of the chairman, I suggest that I simply file my brief with the reporter on those subjects which have already been covered.

Senator HOLLAND. Your statement is completely covered by a memorandum?

Mr. HUSTON. Yes, sir.

Senator HOLLAND. That memorandum will be received and filed and made part of the record.

(The prepared statement of Howard Huston is as follows:)

AMERICAN CYANAMID CO.,
New York 20, N. Y., April 22, 1952.

COMMITTEE ON FINANCE,
United States Senate,
Senate Office Building, Washington, D. C.

GENTLEMEN: American Cyanamid Co. was organized in 1907. At that time we had but one plant and produced a single product. Today we operate 42 plants, which produce about 5,000 items for use by 200 industries and the ultimate consumer. We employ over 20,000 people.

Our growth is typical of the growth of the chemical industry in the United States. Ours is an extremely complex and integrated industry. From a few basic materials stem a very large number of interrelated compounds which by chemical processes are converted into a wide diversity of finished goods, such as organic dyes, pigments, pharmaceuticals, fine chemicals, industrial chemicals, mining chemicals, intermediates, plastics, and explosives. This interdependence is vital and sensitive. To interrupt or disturb this balance is to sow the seeds which will grow to destroy our American chemical industry so vital in peace to be effective in war. Research and development are the lifeblood of our industry. We spend over $10,000,000 a year for research and development.

The chemical industry, of which we are an integral part, is uniquely essential to American productivity—it serves all other industries. Its principal characteristic is growth. No industry makes such a diversity of products nor holds the key to so many potential new products. Thus, our company is vitally interested in the laws which regulate customs procedure.

H. R. 5505, currently before your committee, is entitled the "Customs Simplification Act of 1951." We approve those provisions of the bill designed to actually improve the administration of our customs procedure. However, we believe that sections 2, 13, and 20 of the bill would not simplify our customs procedure.

We are refraining from a discussion of matters relevant to this bill which have their roots in executive international arrangements, first, at the request of your committee, and, second, on the assumption that section 24 of the bill continues to represent the sense of Congress.

SECTION 2. ANTIDUMPING AND COUNTERVAILING DUTIES

This section proposes amendments to the Antidumping Act of 1921 and the Tariff Act of 1930. As a background to our discussion, it must be noted that under section 13 of H. R. 5505 foreign value as a basis of valuation in our customs procedure would be eliminated. Export value is provided as the first basis of valuation to be used by our customs officials for the application of duties.

The provisions of section 2 (a) and (b) of H. R. 5505 of themselves are not objectionable. However, the changes proposed in section 2 (c) which would affect our law governing countervailing duties are objectionable.

Under existing law (sec. 303 of the Tariff Act of 1930, countervailing duties), the Secretary of the Treasury is required to determine and declare the net amount of any bounty or grant bestowed by a foreign country on the manufacture, production, or export of any article made within its jurisdiction, which is dutiable under our laws and imported into the United States. He is required

by law to issue regulations necessary for the identification of such articles and merchandise and for the assessment and collection of the additional duties to be imposed in accordance with the provisions of section 303 of our Tariff Act of 1930.

The amendment proposed in H. R. 5505 would seriously weaken the present law (except for the recognition that exports from a country may receive unfair advantage "through multiple official rates of its exchange in terms of United States dollars, or otherwise"). Countervailing duties would no longer be mandatory, once the bounty or grant is known to have been paid or bestowed. Countervailing duties would be imposed only if the Secretary of the Treasury should determine, after such investigation as he deemed necessary, that an industry in the United States was being or was likely to be injured, or prevented or retarded from being established, by reason of the importation into the United States of such articles or merchandise in respect of which the bounty or grant was paid or bestowed. Subsidization of exports can only result in unfair competition. The intent of the Congress has been long established that such type of competition will not be tolerated. Thus, the countervailing duty should be imposed once the offender is known to have given the bounty or grant in order to discourage effectively such an unfair method of competition in our markets, regardless of any likely injury or prevention or retardation of an American industry.

The basic economic evils intended to be deterred are on the one hand, the giving of a bounty or grant, and on the other, dumping. There is no reason, therefore, to require a finding of injury or the likelihood of injury, or the prevention or retardation of an American industry as a condition precedent to invoking our Antidumping Act. This provision should become operative once the evil—dumping—occurs, for that is the real threat to our industry and the danger Congress should forestall.

Thus, to simplify this aspect of our customs practice, it is recommended that our Antidumping Act be likened to our existing law governing the imposition of countervailing duties. If this is done, the special dumping duty now provided should be less than any countervailing duty imposed on the merchandise by reason of a payment or bestowal of a bounty or grant.

Since foreign value as a basis of valuation would be eliminated by H. R. 5505, exporters to the United States should be required to file with our Customs a certificate representing what the foreign market value of the merchandise is in the country of export to the same class of purchaser. This has been a long established practice in Canada where dumping of itself is prohibited regardless of its injurious effect upon a Canadian industry.

Congress has repeatedly assigned to the Tariff Commission the responsibility of determining and apprising the legislative and executive branches of our Government of the effect of imports upon our economy. Thus, it would make for further simplification, if Congress should require the Tariff Commission, rather than the Secretary of the Treasury, to make the determinations which, in accordance with our recommendation, would be made under both our Antidumping Act and countervailing-duty law, as modified. The change would make for better coordination, would be sound administratively and, therefore, add to simplification.

SECTION 13. VALUE

Section 13 of the proposed bill would repeal section 402 of the Tariff Act of 1930. It provides various bases of valuation to be used in assessing duties on items in our tariff act subject to ad valorem duties. Four bases of value for the assessment of duties are proposed—export value, United States value, comparative value, and constructed value. Foreign value is eliminated. As we are fully familiar with the difficulties attendant the determination of foreign value, we have no objection to its elimination provided exporters are required to certify as to the foreign market value of the merchandise to permit effective administration of our antidumping law.

The definitions of the respective bases of value in the bill create new concepts of value which, if adopted, will cause confusion and uncertainty rather than simplification. Values presently defined in our tariff act have been applied and interpreted by the Treasury Department and our courts repeatedly for many years so that their meaning is clear and their application simplified. There appears no need to change the bases of value—except if it be foreign value.

Export value is based on value or price in the principal markets of the country of exportation of the merchandise or similar merchandise undergoing appraise-

ment which is freely sold or offered for sale therein in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States. Conditions constituting the basis of export value are controlled within the country of export. Many countries export on a multiple price basis and at prices subsidized, cartelized, and designed to penetrate and disrupt our domestic market by low export values and corresponding low duties.

Our only protection remaining against an abuse of this basis of value is found in our existing antidumping and countervailing duty laws which should be strengthened, rather than weakened, as proposed in section 2 of H. R. 5505.

United States value, as defined in the proposed bill, removes the ceilings provided under existing law on certain deductions allowed for commissions, profit, and general expenses from the selling price of the merchandise in the United States. Thus, profits and expenses are allowed in such amounts usually made by sellers in such market on imported merchandise in the same class or kind as the merchandise undergoing appraisement. The control over profits rests with the foreign manufacturer, and, therefore, to that extent United States value remains subject to foreign control. The elimination of the ceilings on commissions, profits, and general expenses can be expected to increase litigation and delay disposition of disputes, all of which would hardly seem to make for simplification.

Comparative value is a new basis of value. The discretion allowed an appraiser in making a comparison between the imported merchandise and other merchandise from the same country is not only unlimited, but places a responsibility on the appraiser which is unfair, and no less absolute. We are mindful of the principle that administrative acts of public officials to whom discretion is allowed are not ordinarily reviewed by our courts except for fraud, mistake, or gross neglect. Thus, the standard, if any, to govern the appraiser is the extent to which he can project his imagination.

Constructed value is, in effect, a new name given to the present "cost of production," except that, in the proposed bill again, the amounts allowed for profit and general expenses are left to the foreign producer and ultimate litigation in our courts.

It is difficult to conceive the need for these redefined bases of value in section 13 of the proposed bill or the simplification which would result from their application. In fact, the definitions, in their application, would seem to cause uncertainty, delay and injustices to American producers. As such, therefore, the section would complicate rather than simplify the administration of our customs.

SECTION 20. CONVERSION OF CURRENCY

Under our Constitution, power vests in the Congress to coin money, regulate the value thereof, and of foreign coin (art. I, sec. 8). By the act of August 27, 1894 (sec. 25), Congress required the Secretary of the Treasury to proclaim quarterly the value of foreign currencies expressed in United States dollars. Section 522 of the Tariff Act of 1930 requires that for the purpose of assessment and collection of duties upon imported merchandise, when necessary to convert foreign currency into currency of the United States, the values as proclaimed by the Secretary of the Treasury shall be applied.

Where the Secretary has not proclaimed a conversion rate or where the proclaimed rate varies by 5 percent or more from the buying rate in New York on the day of exportation of the merchandise, the New York buying rate is to be used for the assessment of customs duties. It has been reported to the Congress that practically all commercial rates do vary by more than 5 percent from the gold-content rate required to be proclaimed by the Secretary of the Treasury. (See testimony by the Assistant Secretary of the Treasury during hearings before the Committee on Ways and Means of the House of Representatives on H. R. 1535, p. 41.)

Section 20 of H. R. 5505 would change the basis for conversion of foreign currencies into United States dollars for customs purposes. This section would base rates of exchange on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund, or pursuant to any other international agreement to which the United States is a party. During the abovementioned testimony before the Committee on Ways and Means of the House, page 41, the representative of our Treasury further informed the Congress that many countries do not maintain such a par value pursuant to the Articles of Agreement of the International Monetary Fund, and for these countries, the conversion rate is to be determined by the New York buying rate as certified

by the Federal Reserve Bank, as at present. Thus, section 20 of H. R. 5505 further provides, in effect, that if no such par value (in accordance with the Articles of Agreement of the International Monetary Fund) were so maintained for a particular date, the conversion would be made at the buying rate for the particular foreign currency in the New York market to be determined by the Federal Reserve Bank of New York, and certified to the Secretary of the Treasury who shall make it public at such times and to such extent as he shall deem necessary.

Section 25 of the act of 1894 is in effect today. Where commercial rates vary by more than 5 percent from the gold-content rate so proclaimed by the Secretary of the Treasury, the New York buying rate for foreign currency now published by the Federal Reserve Bank of New York at noon of each day can be used. This rate reflects the current buying rate and, therefore, gives foreign currencies values which are more representative of their commercial value. The Secretary of the Treasury should be required to publish such rates on every bank business day so that appraisers would have these data currently available. Such a practice would maintain a current list of par values, expressed in United States dollars, of the several foreign currencies. The International Monetary Fund admittedly does not maintain such a complete listing of current par values of member nations, and, even if it did, such a list would not be as representative of current commercial value.

In addition, to base rates of exchange, as alternatively provided in the proposed bill, on the par value established pursuant to any other international agreement which is not even in existence is equivalent to asking Congress to delegate completely its fundamental power to coin money, regulate the value thereof, and of foreign coin. This is "gross oversimplification."

To summarize:

1. Section 2 of the proposed bill seriously weakens our existing law which makes mandatory the imposition of countervailing duties on imported merchandise which enjoys bounties or grants from the country of export.

Dumping goods upon our markets is just as unfair a method of competition as the giving of bounties or grants, or preference through multiple official rates of exchange

Thus, our existing countervailing-duty law should not be weakened as provided in section 2 of the proposed bill. Our antidumping law should be strengthened by removing therefrom the requirement that injury or the threat of injury to an American industry be a condition precedent to invoking its provisions. In this event, the special dumping duty imposed should be less the amount of any countervailing duty imposed

As foreign value would be eliminated, exporters should be required to file a certificate verifying the foreign market value of the merchandise.

The Tariff Commission, rather than the Secretary of the Treasury, should be given the responsibilities thus provided under both the Antidumping Act and the countervailing-duty law.

2. While we agree that "foreign value" as a basis of valuation for customs purposes should be eliminated, the redefined bases of value published in section 13 of the bill would cause uncertainty and confusion in the administration of our customs laws and thus complicate rather than simplify the transaction of international trade.

3. The basis for the conversion of foreign currencies into United States dollars should not be governed by the International Monetary Fund or any other international agreement to which the United States may become a party. Rather, the basis should be the buying rate for foreign currency published daily by the Federal Reserve Bank of New York which is more representative of the current commercial value of such foreign currencies. The Secretary of the Treasury should be required to publish such information on every bank business day, and thereby facilitate the appraisals made by our Customs officials.

4. We urge your committee to consider these observations and amend H. R. 5505 accordingly.

Respectfully submitted.

HOWARD HUSTON, *Vice President.*

Senator HOLLAND. The committee will recess until 10 o'clock Monday.

(Whereupon, at 10:35 a. m., the committee recessed, to reconvene at 10 a. m. Monday, April 28, 1952.)

CUSTOMS SIMPLIFICATION ACT

MONDAY, APRIL 28, 1952

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m. in room 312, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present, Senators George, Johnson of Colorado, and Butler.

Also present, Elizabeth B. Springer, chief clerk; and Serge N. Benson, professional staff member.

The CHAIRMAN. The committee will come to order.

Before we begin with the first witness, there will be inserted in the record the statement of Richard P. White, executive secretary, American Association of Nurserymen, Inc.

(The statement of Richard P. White is as follows:)

STATEMENT OF RICHARD P. WHITE, EXECUTIVE SECRETARY, AMERICAN ASSOCIATION OF NURSERYMEN, INC., WASHINGTON, D. C., ON H. R. 5505

My name is Richard P. White, executive secretary of the American Association of Nurserymen, Inc., 635 Southern Building, Washington 5, D. C.

I appear before this committee to present a viewpoint in regard to section 11 of H. R. 5505, a proposal "to amend certain administrative provisions of the Tariff Act of 1930 and related laws, and for other purposes."

Section 11 proposes certain amendments to section 321 of the Tariff Act of 1930. My testimony is directed specifically to section 321 (b) (2).

This subsection proposes to exempt articles from duty provided the aggregate value of all articles in a shipment does not exceed $10, and provided the articles are intended for personal or household use of the consumer and are not for sale. The purpose of this section is obviously, and as the amendment states, to avoid expense and inconvenience to the Government disproportionate to the amount of revenue collected. The objective to be sought is a commendable one, but there are certain consideration which must be given to the proposal in view of the plant quarantine regulations of the United States Department of Agriculture under the Plant Quarantine Act of 1912, International Plant Quarantine 37, and the regulations issued pertinent thereto.

I understand that this bill, H. R. 5505, has not been submitted to the Department of Agriculture for consideration and report. In our view, it should be submitted to the Department of Agriculture for a report at least upon this section.

The United States Department of Agriculture has now established a system whereby certain types of living plant materials are inspected by United States Government inspectors in foreign lands for determination of their apparent freedom from plant pests. This does not preclude the possibility of reinspection at ports of entry in the United States, as well as fumigation of the plant material as a precautionary measure against the introduction of plant pests not now present or widely distributed within the United States. It is true that the regulations under Plant Quarantine 37 require certain external evidences placed upon containers which include plant materials subject to port-of-entry inspection and fumigation.

The practical effect of the exemption proposed in section 11 of H. R. 5505 starting on page 15, line 18 of the proposal would be to permit large quanties of shipments of plant materials from foreign countries direct to the consumer in this country via international parcel post and by both air and ship. The result would be that the United States Department of Agriculture would fail to intercept large numbers of these very small shipments, and if they did intercept them all, the personnel would not be adequate to take care of the task involved in inspection and fumigation at the ports of entry.

This would result, we feel, in reducing the effectiveness of our international plant-quarantine procedure and would eventually result in the introduction and establishment of plant pests, both insects and diseases, not now known to exist or not widely distributed in the United States. When such establishments were discovered, Congress would be requested to appropriate considerable sums of money either for eradication purposes or for control purposes under the system of domestic plant quarantines. In addition to that, various nursery cultures in this country would be jeopardized with heavy losses of both plant material and operating capital due to the domestic quarantines which would be used as a method of prevention of spread, cost of control procedures, etc.

It is my understanding as indicated above that this proposed legislation has not been submitted to the Department of Agriculture for their consideration and we feel very strongly that it should be on account of the above situation which would be permitted. We would like to suggest, therefore, that H. R. 5505 be submitted to the Department of Agriculture for their consideration before action is taken on it by the Senate Finance Committee.

The CHAIRMAN. There will be inserted in the record the letter, dated April 25, 1952, from the National Federation of American Shipping, Inc.

(The letter from National Federation of American Shipping, Inc., is as follows:)

NATIONAL FEDERATION OF AMERICAN SHIPPING, INC.,
Washington, D. C., April 25, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance,
United States Senate, Washington 25, D. C.

DEAR SENATOR GEORGE: The National Federation of American Shipping, an organization representing a substantial majority of all deep-water American flag shipping, desires to submit the following comments and recommendations with respect to H. R. 5505, a bill to amend certain provisions of the Tariff Act of 1930 and related laws, which is the subject of hearings by your committee.

Section 9 of H. R. 5505 would extend to foreign-flag vessels the privilege now enjoyed by foreign-flag aircraft of withdrawing equipment and repair parts for installation free of duty from a bonded warehouse or continuous customs custody, and of treating such withdrawal as an exportation for purposes of the tax drawback laws. Section 9 would also permit similar withdrawal free of duty and taxes on import for ground equipment to be used by foreign-flag aircraft. The privileges granted in the case of aircraft are conditioned upon reciprocal privileges being accorded to aircraft of the United States when in foreign countries.

The federation agrees that this discrimination against the shipping industry should be removed. However, it believes that the privileges to be extended by section 9 to foreign-flag vessels should be granted only when reciprocal privileges are accorded to vessels of the United States. The Federation urges, therefore, that section 9 (a) of H. R. 5505 also amend section 309 (d) of the Tariff Act of 1930, as amended (N. S. C., 1946 ed., title 19, sec. 1309 (d)), by inserting the words "and vessels" immediately after the word "aircraft" wherever such word appears in section 309 (d).

Section 22 of H. R. 5505 would convert the excise tax imposed by section 2470 of the Internal Revenue Code on the first domestic processing of coconut oil into an import tax on the oil content of copra. Enactment of this section would mean that a copra importer would have to pay an import tax of approximately $42 per long ton of copra. The result would be a further reduction in the importation of copra, which has already been sharply reduced since World War II. At the present time only about 40 percent of the Philippine copra production is being shipped to the United States, whereas approximately 90 percent of such production was being imported prior to World War II.

Copra is an important home-bound commodity for steamship companies engaged in the trans-Pacific trade. They are, therefore, greatly concerned about anything which would interfere with, or hinder in any manner, the importation of copra. Since the enactment of section 22 of H. R. 5505 would greatly reduce the amount of copra to be imported into the United States, the federation urges that this section be deleted from the bill.

We respectfully request that this letter be incorporated in the record of the hearings which are being held on H. R. 5505.

Very truly yours,

A. U. KREBS, *Counsel.*

The CHAIRMAN. Mr. Radcliffe, you are first on the list.

I have not been back in town long enough to make a check on the committee. So far as I know there may be one or two other members coming in in a few minutes, but we will proceed, if it is agreeable to you.

STATEMENT OF HARRY S. RADCLIFFE, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.

Mr. RADCLIFFE. My name is Harry S. Radcliffe, executive vice president, National Council of American Importers, Inc. Our address is 45 East Seventeenth Street, New York City.

The CHAIRMAN. All right, Mr. Radcliffe, we will be glad to hear from you, sir.

Mr. RADCLIFFE. Mr. Chairman, I have a prepared statement which I shall file with the committee, and I understand that it will be reproduced in the record. I do not intend to read it.

The CHAIRMAN. You may file your complete statement in the record, and if you wish to, you may speak of it briefly.

Mr. RADCLIFFE. Yes; I would just like to briefly outline our position on the simplification bill.

The CHAIRMAN. Yes, sir; you may do that.

Mr. RADCLIFFE. Our primary position is that we urge prompt passage of this bill at the present session of the Congress, with such improvements as can be quickly made.

We also advocate additional measures in the direction of customs simplification and we hope that the Congress, possibly in 1953, will be willing to consider a second package, as we might call it, on customs improvement.

This bill is essentially a Treasury bill based in a great degree on a management study made by McKinsey & Co. over a period of years under special authority of the Congress, and it covers a number of highly essential reforms in our customs administrative laws that should result in efficiency in customs operation.

The Committee on Ways and Means in its report stated that they believed the bill gives the importing public improved service at a lesser cost to the taxpayer. We agree with that, but we would like to have more of the same thing.

This bill is a big step forward, and I think most everyone agrees on that, and I do not believe that the bill should be regarded as controversial in any sense.

In making suggestions and criticizing some of the provisions of the bill, we are motivated by a desire to make the simplification measure equitable and practicable to the Government and to the importing businessman.

As I have read the press accounts of these hearings, I feel that perhaps an incorrect impression has been created. It is something like a person who is buying a house or renting an apartment. The fact that he does not care for the wallpaper in the living room does not mean that he objects to the floor plan or the closet space.

We, too, would prefer some slight changes that the architects of the bill, having once drawn the plan and arranged the color scheme, have not seemed ready to adopt.

As I understand the situation, the very purpose of these hearings is to give the committee an oportunity to have the constructive suggestions made by the non-Government organizations and witnesses. We are all, I think, working in the same direction of genuine and workable customs service improvement.

As the national import organization, we are advocating seven specific amendments to the bill, and those are set forth in my statement in some detail, with the exact page number and line that we would like to have amended.

The first one relates to section 13 on valuation. We feel that there should be some provision there to permit bona fide sales to an exclusive selling representative in the United States, who is financially independent of the foreign seller, to be used in determining "export value" and "United States value."

In my prepared statement, I gave some language, but I would like to give an alternative suggestion. We would amend the definition of "freely sold or freely offered for sale," and I have suggested that after the definition of "purchasers at wholesale" the words be inserted "who are financially independent of the seller."

We do not believe that there should be an export value where the firm here is a branch concern of a foreign supplier, where the values arranged between the two on exclusive items might be just a bookkeeping value. We are looking for the true value. But instead of that suggestion, I think that we could add on line 25 of page 22 of the bill these words:

Merchandise sold or offered for sale to an exclusive selling agent in the United States who is financially independent of the seller shall be deemed to be freely sold or freely offered for sale.

That is the additional suggestion that I did not have in the prepared paper.

The CHAIRMAN. Yes, sir.

Mr. RADCLIFFE. The second amendment that we wish to suggest, and other witnesses have come to the same conclusion, is that we believe that the importers should be permitted to retain their present right to amend their customs entries.

An entry has to be made within 48 hours after arrival as a rule, and even the bill itself in connection with the undervaluation duties mentions that the importer must furnish the appraising officers with information in his possession at the time of entry or which he can obtain within a reasonable time thereafter. Well, if he does obtain further information within a reasonable timeafter entry, under this bill, he would not be able to correct his entry in line with that information, and we feel it is quite important that the importers should retain their right to amend their entries.

We also believe that a new subsection should be added in section 17 of the bill to provide a time limit of 120 days after the date of

entry for the completion of appraisement, and 180 days after the date of entry for appeals by the collector for reappraisement.

With the elimination of foreign value, we can see no reason why 4 months should not be an adequate time for the appraising officer to find value, and complete his appraisal.

At the present time there is no such time limit, and appraisements are sometimes withheld—we recognize it is due in part to foreign-value delays—and they are often withheld for many months and even for years, and that keeps an importer in a state of uncertainty as to his final customs obligations.

We also believe that the matter of conversion of currency, to which some witnesses at the House hearings and, I believe, here, too, have objected because it would take the par values established pursuant to the Articles of Agreement of the International Monetary Fund, should have attention. Some people feel that that is not a proper procedure to have an international body controlling any part of our customs administration.

We would make a compromise suggestion, that the bill be changed largely in the language of the present law, but eliminating the old-fashioned mint par values, that is, the quarterly findings by the Director of the Mint as to the value of foreign coins in circulation. That system was instituted by the act of February 9, 1793, and the citation is First United States Statutes, page 300; and it is a very ancient system. We believe that there should be a quarterly proclamation now of the Secretary of the Treasury of those par values of the International Monetary Fund which do truly represent the value of foreign currency in commercial transactions.

Then we recommend that the present 5 percent variation rule be reinstated, so that if the rate found daily by the Federal Reserve Bank of New York should vary by more than 5 percent from that proclaimed value, then the Federal Reserve rate would be used as it is today.

We also object to one section—the last two sentences of the new section 522 (d) on pages 35 and 36 of the bill—relating to future conversion of currency under some rules to be formulated by and under an international agreement to which the United States is a party. We think that is a little premature. Such an international agreement does not now exist, and we believe it would be time when there is such an agreement for the Treasury to come to the Congress and suggest a suitable amendment of section 522.

One other suggestion is that the ancient system of a special duty for so-called undervaluation should be eliminated. There are adequate provisions in the law in section 542 of the Code, and in 592 of the Tariff Act, to deal with fraudulent situations, and this system of a special 1 percent extra duty for each 1 percent by which the entered value is below the final appraised value is certainly obsolete.

The bill does amend section 489 of the tariff to make it more reasonable in its application, but we see no need for it to be retained in there at all.

In a report that the United States Tariff Commission filed in connection with this bill on the House side, I have two very brief extracts, and they state:

> It is curious that these complicated mechanisms had to be devised to enable an honest importer to escape from a statutory snare which was based on conditions which had long ceased to exist.

They were making reference to the fact that when this system was originated in 1818, the Government was in an inferior position compared to the importer in getting information from foreign markets, and also in the laws at that time, the burden of proof was on the Government, and the Collector of Customs was personally liable in case he began an action that did not succeed. All those things have long since been corrected, and the Tariff Commission, in conclusion said:

> As a result of all these changes—

in the situation—

> there would seem to be little present reason for automatic undervaluation duty.

We agree with that, and believe that the section 17 (d) insofar as it relates to the undervaluation penalties should be eliminated.

Finally, we suggest that section 22 of the bill be deleted entirely. That is the section that would convert certain processing taxes into import taxes, and we believe that proposition does not involve any measure of true customs simplification. It is just putting a present tax in other form, and one of the reasons for our objections is that the Tariff Commission would have to make a study and at some future date determine what import taxes are suitable as the equivalents of the present processing taxes.

There are just two other matters. We suggest a clarification of section 11 which pertains to administrative exemptions.

It is clear from the report of the Committee on Ways and Means that this section was never intended to encourage or even to permit the establishment of a mail order business directly from foreign suppliers to purchasers in the United States. In fact, I am reading from the Committee Report No. 1089, by the Committee on Ways and Means to the House on this bill, where it said:

> It is the desire of the committee that the Secretary of the Treasury shall exercise his authority under this section in such a manner that the section will not be subjected to abuses by mail order businesses engaging in the direct shipment of dutiable articles to purchasers in the United States.

In connection with that, the committee did amend the bill to put in section 11 a provision that it should not be applied to c. o. d. transactions. But there might be mail-order business, not necessarily on the basis of c. o. d., and I believe that section needs clarification because we do not believe that a loophole like that should go without being plugged up.

We also approve of the idea that the Tariff Commission should function to establish injury or threat of injury in all countervailing duty cases and in all dumping cases, and we oppose the Mundt amendment, which was introduced as a separate bill, H. R. 5505—well, it is under H. R. 5505, and it was introduced February 18, and that relates to the extension to the export of any merchandise to the United States in a processed or partially processed form at a more favorable rate of exchange than is extended to exports of such merchandise in a raw or unprocessed form. We feel that amendment represents too general a formula. Multiple rates of exchange are too complex a subject, and they have many ramifications, so this would put in the bill what we believe to be an inflexible rule. It would not be workable.

Thank you. That concludes my statement.

The CHAIRMAN. Thank you. Your full brief will go in the record, and when the committee gets into executive session, why, we will be glad to get into it.

Mr. RADCLIFFE. Thank you, Mr. Chairman.

(The prepared statement of Mr. Radcliffe is as follows:)

TESTIMONY OF HARRY S. RADCLIFFE, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC., ON THE CUSTOMS SIMPLIFICATION BILL (H. R. 5505)

The customs committee of the National Council of American Importers has taken advantage of the opportunity since the customs simplification bill, as amended by the Committee on Ways and Means, was passed by the House of Representatives last October to study H. R. 5505 thoroughly and objectively. Our customs committee also made a rather comprehensive study of the testimony presented by the witnesses who appeared at the House hearings representing various interested organizations.

These witnesses, including myself, made a number of suggestions for additional changes in our customs administrative laws that were not adopted by the Committee on Ways and Means. At this time, our organization will refrain from pressing for consideration of the particular suggestions I advanced in my testimony before the House committee—with one exception relating to a time limit on appraisement—which is important to improved efficiency in customs procedure.

The position of the National Council of American Importers is that we strongly favor the prompt passage of H. R. 5505 with such improvements as can be quickly made, but we do hope that the Committee on Ways and Means and your committee will be willing to give consideration to further proposals for customs simplification early next year. Any changes in our administrative laws that promise to reduce unnecessary red tape, speed up customs business, or permit the importer to settle his obligations to customs with less delay and uncertainty, certainly should merit the earnest consideration of the Congress in 1953.

H. R. 5505 will accomplish a great deal in this direction. It seems to be generally agreed that the most important section of the bill is section 13 relating to value. The elimination of "foreign value" will take out a provision of our present law that has been a constant source of trouble. The difficulties of ascertaining a value based on quotations made in a foreign country for merchandise to be delivered at wholesale for consumption within that country under conditions that often have little or no relation to trading in world markets must be obvious. In day-to-day application, the use of "foreign value" has caused more delays and uncertainty for customs officials and importers alike than any other single provision of the present law. The use of "export value" as the primary basis of valuation is, therefore, proper and workable. Export value represents world market prices and our protective-tariff system contemplates assessment of ad valorem rates of duties based on true values in the world markets. This major change should prove a big step forward in the prompt and equitable appraisement of imported merchandise which is subject to ad valorem rates of duty. The alternative methods of value provided in section 13 which are to be used when a satisfactory "export value" cannot be determined are designed to result in appraisement at a value closely approximating the "export value." The new definitions of important terms in section 13 (h) should be of great help in clarifying the technical meaning of the value section for the businessman and should simplify administration.

We believe section 13 can be improved by the changes in wording which we understand the witness representing the United States Council of the International Chamber of Commerce presented at these hearings last week. We concur in the suggestions made by Mr. Allerton de C. Tompkins.

There is one very important change in the definition of the term "freely sold or offered for sale" that we wish particularly to endorse. That is:

On line 18, page 22 of the bill, delete the word "all" and insert after the words "purchasers at wholesale" the words "who are financially independent of the seller".

The purpose of these suggested changes is to remove a purely technical obstacle which now exists to the application of "export value" to merchandise imported by an exclusive selling representative of a foreign seller. The customs courts

have held in effect that sales by a foreign shipper to an exclusive representative in the United States are not "freely offered for sale to all purchasers."

It is a very common occurrence for a foreign producer to appoint one or more exclusive selling agents in the United States to promote the sale of his products. Where the American selling agent is financially independent of his principal abroad, there is no valid reason why the merchandise should not be appraised on the basis of "export value."

Furthermore, American importers often distribute their merchandise in the United States through exclusive dealers in various sections of the country, and, as the law now stands, it is not possible to use a "United States value" where this method of distribution is customary unless similar merchandise is freely offered to all purchasers by some other importer.

Some sections of H. R. 5505, other than the value section, which are endorsed by importers as great improvements over the present law are: Section 3, which repeals special marking requirements for certain metal articles which have often caused undue expense and hardships without serving any useful purpose; subsections 17 (d) and 17 (f), which recognize the final appraised value should be controlling even if lower than the importer's entered value; section 18, relating to commingling of goods; section 10, providing for draw-back of duty on goods received by an importer but not ordered by him, i. e., unsolicited merchandise; and section 15, providing for informal entry of merchandise having an aggregate value not greater than $250 rather than $100 as at present.

Other provisions of the bill are designed chiefly to streamline the work of the customs service to increase efficiency and to decrease costs. During the past several years there has been a chronic shortage of customs personnel, particularly at the larger ports of entry, which has caused recurring log jams in clearing goods through customs. Our organization is very much concerned over this situation, and while these new provisions may, in the long run, serve to relieve this serious situation to some extent, we do not expect too much in the way of release of manpower immediately. The several provisions of the bill designed to facilitate the internal administrative work of the customs service are clearly necessary and desirable. We believe, however, that section 11 of the bill, relating to administrative exemptions, should be clarified to exclude any possibility of duty-free mail-order shipments valued under $10 from foreign producers direct to American consumers.

There are two subsections of the bill, 17 (a) and 17 (b), and two sections, 20 and 22, with respect to which our organization wishes to make specific recommendations. In addition, we would respectfully suggest that a new subsection 17 (c) be inserted in the bill to provide for a definite time limit of 120 days upon the appraisement of merchandise. I should like to present these suggestions in the order of the sections of the bill rather than in the order of the importance we attach to them.

Right to amend initial entry.—Subsection 17 (a) deletes language from section 487 of the administrative provisions which has long permitted the importer to amend his original customs entry, which must be submitted very soon after the arrival of a shipment in the United States. Such an amendment can be made under existing law at any time before the goods are formally appraised. The chief reasons at present why importers amend their entries are twofold: First, if the importer finds that his entered value was too high, he is bound, under section 503 (a), by his entered value even though the appraised value is lower. The present bill corrects this absurd situation. Second, if his entered value was too low, he is in danger of being subject to the so-called undervaluation duty of 1 percent of the final appraised value for each 1 percent that such final appraised value exceeded his entered value. So the importer has every reason to amend his original entries to correspond, as far as possible, with the appraised value. By filing a written request prior to entry with the appraiser for information as to proper value, the importer often receives the necessary information to enable him to make these amendments of entries.

Section 17 (d) eliminates one reason for amendment of entry, namely that the higher of the entered or the final appraised value shall prevail. Section 17 (b) makes substantial amendments to section 489 of the tariff relating to the special duty for so-called undervaluation. The extra duty of 1 percent is, however, still imposed under this bill if the appraiser, the collector, and ultimately the United States Customs Court are not convinced that the importer furnished all information requested by customs officers which is relevant to value, and which is available to him at the time of entry or within a reasonable time thereafter.

From the testimony given before the Committee on Ways and Means, it is clear that the Treasury Department holds the view that amendments of entry will be entirely unnecessary under the new arrangement. In short, they say if the entered value is too high, the importer will receive a refund without making an amendment. If the entered value is too low, the special so-called undervaluation duty will never be assessed unless the customs officials can establish beyond doubt that the importer deliberately withheld pertinent information relating to value that was available to him when he made his original entry or which he had shortly thereafter.

What has been entirely overlooked is that most importers when dealing with customs, or any other Government tax-collecting agency, do not want any discrepancy to exist between their obligations and their payments. While technically, the money turned over to the collector of customs at the time of a customs entry is a deposit of duty, 9 out of 10 importers will say they made an entry and paid the duty. It is for this reason that importers are surprised and distressed when they are called upon for the payment of additional duty months or years later when the liquidation of the entry occurs. If an importer learns that the deposit of duty he made at the time of entry is insufficient to cover his obligation on that particular lot of goods, he would much rather amend his entry and deposit the additional duty required right away, than to put the extra money in a reserve account on his books to be turned over to customs some time later, especially if there is any risk whatsoever of an undervaluation duty being imposed equal to the entire amount of the additional regular duty to be collected.

In the past, amendments of entries have often been made because the appraiser found a "foreign value" higher than the "export value" represented in the importer's earned value. With the elimination of "foreign value," such amendments of entry will no longer occur, and occasions for amendment of entry will be far less frequent than is now the case. The desired elimination of paper work is sure to result from the deletion of "foreign value" rather than the revocation of the right to amend entries. It seems to us very important that the right to amend the original entry be retained so that when an importer finds that, for one reason or another, his entered value is incorrect, he may adjust matters promptly and deposit any additional duty due to the Government before the appraiser has made his official report of value to the collector. Then things will come out about even at the time the entry is liquidated. This also seems in line with the pay-as-you-go principle of Federal taxation. Therefore, we earnestly suggest that H. R. 5505 be amended by inserting on line 17 page 27 of the bill the following language: "and inserting in lieu thereof 'or at any time before the appraiser has made his report of value to the collector,' ".

Duties on undervaluation.—Paragraphs (a) to (c) of section 17 (b) of the bill contain a proposed revision of section 489 of the tariff relating to penalties in the form of special duties when the final appraised value exceeds the entered value. The proposed revision is a great improvement over the harsh provisions of the present law, but we demur on the entire proposition that a special duty should be imposed whenever the entered value is lower than the final appraised value. That proposition is based on the theory that some serious threat must be held over the head of all importers to keep them honest when they make their customs entries. The official analysis of this bill presented by the Treasury Department states "It is practically a necessity that the consequences of furnishing incomplete and inaccurate information shall be sufficiently serious so that the pecuniary interest of the importer is on the side of making it complete and truthful" (p. 25, House hearings). This analysis also frankly states "However, the task of the importer is a difficult one in the light of the fact that the legal questions to be decided in determining customs value are many and complex, and differences of opinion are frequent, while the facts which must be considered in determining customs value are frequently not known to the importer and cannot be ascertained by him" (p. 24, House hearings).

We know of no other instance where a taxpayer who makes a declaration of value according to the facts known to him, or which he can ascertain, may be subject to an extra tax equal to the full difference between the tax determined by the Government after many complex legal questions have been decided and the tax declared by the taxpayer. The importer's entered value is invariably the price he paid, or has agreed to pay, for his goods unless the appraiser indicates to him before entry is made that a different value prevailed in the country of exportation at the time of export.

In cases where the entered value is actually fraudulent, there are ample provisions in section 542 of the United States Code, 1946 edition, supplement II, title 18, for personal penalties for customs frauds and in section 592 of the Tariff Act of 1930 for the forfeiture of goods entered by means of a false declaration. In actual practice where a fraudulent entry is made, customs officers invariably proceed under these provisions of the law rather than under section 489.

In the memorandum submitted on this bill by the United States Tariff Commission, the origin of this special duty levied under section 489 is given:

"Additional duties for undervaluation have been on the statute books practically continuously since 1818. They originated at a time when the Government was in a considerably inferior position vis-à-vis the importer in ascertaining the 'true value' of imported merchandise for customs purposes. The imposition of undervaluation duties was justified on the ground that the existing measures for preventing and punishing fraudulent undervaluation were inadequate. For example, the burden of proof was borne by the Government, and its ability to prove a case of fraud depended largely on what assistance importers of products other than the importer suspected of fraud might give to the Government, since the Government had no adequate facilities for investigating abroad regarding 'true' market value of the goods under suspicion. Another handicap suffered by the Government was the fact that a collector of customs who prosecuted an importer for fraudulent undervaluation was personally liable in the event the case went against him" (p. 237, House hearings).

The Tariff Commission's memorandum then outlined the development of subsequent legislation leading to the so-called duress entry and appeals to the Customs Court for remission of undervaluation duties. The memorandum then continued as follows:

"It is curious that these complicated mechanisms had to be devised to enable an honest importer to escape from a statutory snare which was based on conditions which had long ceased to exist. With the tremendous growth of this country and the development of facilities for communications, the Government was no longer in its former relatively helpless position in verifying customs entries. Moreover, laws were changed so as to remove the conditions which formerly made prosecutions for fraud almost futile. The burden of proof in fraud cases was transferred from the Government to the importer; customs officials were relieved of personal liability and in cases where prosecution for fraud failed; enforcement laws generally were strengthened; and the merchant-appraiser system was abandoned and appraisement by official Government appraisers substituted. *As a result of all these changes, there would seem to be little present reason for automatic undervaluation duties* or for the basis-of-assessment rule" (pp. 237, 238, House hearings). [Emphasis ours.]

We respectfully submit that there is no cogent reason for retaining undervaluation duties, especially as the honest and cooperative importer under the proposed revision of section 489 would still have the difficult burden of establishing that he did furnish to the individual appraising officer all of the information pertaining to dutiable value available to him at the time of entry or within a reasonable time after entry. The individual appraising officer would also have some difficult decisions to make as to whether or not the importer had supplied all information requested.

We, therefore, suggest that H. R. 5505 be amended by changing lines 21 and 22 on page 27 to read: "Unauthentic Claim of Antiquity" and by deleting lines 23 to 25 on page 27, all of page 28, lines 1 to 18 on page 29, and by deleting "(d)" on line 19 of page 29 of the bill.

Time limit on appraisement.—At the public hearings held by the Committee on Ways and Means on this bill, witnesses representing a number of organizations were unanimous in asking for some limit on the time in which the appraisement of merchandise should be completed. The present law sets no such limit and appraising officers may delay the establishment of dutiable value for months or even for years. In the past, much of the delay has been due to the difficulty of finding a satisfactory "foreign value" and with the elimination of that troublesome method of valuation, it seems reasonable to anticipate expeditious appraisements.

Nevertheless, an importer is entitled to know what his maximum obligations for customs duties will be within a reasonable time after the merchandise has arrived in the United States and has been entered. Most of the witnesses who advocated a time limit agreed that 120 days after the date of entry should be sufficient for the completion of appraisement. In business, contracts must be fulfilled by a definite date, and goods must be produced and delivered within a

specified time. Customs duties are an element—and often an important one—of an importer's costs for merchandise. In order to calculate his costs and establish his prices, the importer must known within a reasonable time after he has made entry exactly what duty will be assessed by the customs appraiser.

We are convinced that, with the elimination of "foreign value," appraising officers should be able to ascertain dutiable value within 4 months after entry, and it must be remembered that the collector has an additional 2 months to appeal for reappraisement. With a 120-day time limit on appraisement, the Government will have full protection for a 6-month period, and the importer will have the certainty as to his final customs obligations to which he is entitled.

We, therefore, suggest that section 17 of the bill be amended by adding a new section (c) to read as follows:

"(c) Section 500 of the Tariff Act of 1930, as amended (U. S. C., 1946 edition, Supp. II, title 19, sec. 1500), relating to the duties of appraising officers, is further amended by changing subsection (a) (5) to read:

"'(5) To report his decisions to the collector within one hundred and twenty days after the date of entry.'"

Section 501 should also be amended to insert after the second sentence the following: "Where the appraiser fails to report his decision to the collector within the period prescribed in section 500, the entered value shall become the final appraised value and the period within which the collector may file a written appeal for reappraisement shall be one hundred and eighty days after the date of entry."

Subsections 17 (c) to (f) of H. R. 5505 should be redesignated as subsections 17 (d) to (g), respectively.

Conversion of currency.—Some witnesses at the House hearings objected to section 20 of the bill because it would cause the operation of our laws respecting the conversion of currency to be dependent upon an international organization, namely the International Monetary Fund.

It seems generally agreed that the present use of mint par value as a primary method of converting foreign currencies for customs purposes is obsolete, and that the quarterly proclamations of such values by the Secretary of the Treasury are meaningless. Therefore, conversion of currency for customs purposes has for many years past been made at the rate or rates certified by the Federal Reserve Bank of New York as the buying rate in the New York market at noon on the day of exportation. These certified rates are usually to the ten-thousandth of a cent, or even to the hundred-thousandth of a cent. For example in the year 1951, the rate certified by the Federal Reserve for the Belgian franc ranged from 1,98208 cents to 2.00053 cents, while the par value established pursuant to the articles of agreement of the International Monetary Fund remained constant at 2 cents.

American importers, customs brokers, and customs officers would prefer some stability in the rate to be used in making calculations when converting foreign currency into United States dollars for customs purposes. It would have been far more satisfactory, for instance, to figure the Belgian franc at 2 cents all through the year 1951 than to use a different fractional rate slightly above or slightly below that figure from day to day, depending on the exact date of exportation.

We recognize the validity of the objections that our system of conversion of currency should not be controlled by an international organization and would, therefore, recommend that H. R. 5505 be amended as follows: Delete line 24 of page 33 and lines 1 to 14 of page 34, and substitute the following:

"(a) For the purpose of the assessment and collection of duties upon merchandise imported into the United States, whenever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subsection (b), shall be made at the values proclaimed by the Secretary of the Treasury as representing the par values, expressed in United States dollars, of the several foreign currencies maintained pursuant to the articles of agreement of the International Monetary Fund. The Secretary of the Treasury shall proclaim such par values as he shall determine do reflect effectively the value of that foreign currency in commercial transactions quarterly on the 1st day of January, April, July, and October in each year.

"(b) If no such par value has been proclaimed, or if the value so proclaimed, varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the date as of which conversion of currency is required, the conversion shall be made at the buying rate for," etc.

The word "listed" on line 19 and the word "list" on line 20 of page 35 should be changed to "proclaimed" and "proclamation," respectively.

We also suggest that section 20 (d) of the bill be amended to delete the proposed provisions for future conversion of currency in accordance with rules to be formulated pursuant to an international agreement to which the United States is a party. Such a provision might well be considered at some later date as a further amendment to section 522 of our tariff if the United States does in fact become a party to some such international agreement, and the terms and rules governing the conversion of currency under that agreement are known to the Congress and others concerned. For the present we recommend: Delete the two sentences in section 20 (d) beginning with the word "When" on line 20 of page 35 and ending with "subsection (d)," on line 8 of page 36.

Conversion of processing taxes to import taxes.—Section 22 of the bill provides that certain processing taxes now imposed on the first domestic processing of coconut oil and palm-kernel oil be changed to an import tax on copra, palm nuts, and palm-nut kernels. When I testified before the Committee on Ways and Means last August, I said that our organization was somewhat doubtful that this section was desirable because it would shift the tax burden from the domestic processor to the importer, and would involve a determination at some future date by the Tariff Commission of the reasonably equivalent import tax rate for the present processing taxes. Upon further study of the proposed changes, we are convinced that nothing in the direction of customs simplification would be achieved by the proposals in this section of the bill, and we recommend that section 22 (pp. 37 to 41, inclusive, and lines 1 to 4 of p. 42) be deleted.

To sum up, our organization advocates the prompt passage of H. R. 5505 at this session of the Congress with the following changes:

1. Section 13 (value): Permit bona fide sales to exclusive selling representatives who are financially independent of the seller to be used in determining "export value" and "United States value."
2. Subsection 17 (a): Permit importers to retain the right to amend their customs entries.
3. New subsection 17 (c): Provide for a time limit of 120 days after date of entry for appraisement, and 180 days after date of entry for appeals by the collector for reappraisement.
4. Subsection 17 (d): Eliminate the ancient system of a special duty on so-called undervaluation.
5. Designate subsections 17 (c) to (f) as subsections 17 (d) to (g), respectively.
6. Section 20 (conversion of currency): Authorize quarterly proclamations by the Secretary of the Treasury of those par values of the International Monetary Fund which represent the value of foreign currency in commercial transactions. Reinstate the present 5-percent variation rule with respect to the proclaimed rates. Also eliminate provisions for future conversion of currency under rules formulated by international agreement.
7. Section 22: Delete entire section relating to conversion of processing taxes to import taxes.

The CHAIRMAN. Mr. Grinberg?

STATEMENT OF P. IRVING GRINBERG, EXECUTIVE VICE CHAIRMAN, JEWELERS VIGILANCE COMMITTEE, INC.

Mr. GRINBERG. Thank you, sir.

The CHAIRMAN. You may be seated, and identify yourself for the record, will you, please, sir?

Mr. GRINBERG. My name is P. Irving Grinberg. I am executive vice chairman of the Jewelers Vigilance Committee, with offices at 45 West Forty-fifth Street, New York, N. Y.

The Jewelers Vigilance Committee is representative of the entire jewelry industry, including manufacturers, importers, wholesalers, and retailers throughout the country, who produce and deal in all types of jewelry and their component parts, watches, silverware, et cetera.

This petition is being presented on their behalf and is joined specifically by the New England Manufacturing Jewelers and Silversmiths' Association, whose membership is Nation-wide. This is the largest group in the country of manufacturing jewelers and silversmiths, and includes both large and small firms.

My remarks are directed specifically to paragraph 321.

The Jewelers Vigilance Committee did not learn of the proposal to raise the level from $1 to $10 on duty-free mail shipments until January 1952, after H. R. 5505 had been passed by the House. Otherwise, protests certainly would have been filed with the House Ways and Means Committee along the lines now presented to you. At the outset it should be stated that our industry is wholeheartedly in favor of any steps affecting all Government departments which would result in true economy, but the memorandum before you will show that "to save at the spigot and waste at the bung" scarcely accomplishes that objective. It should also be stated that no request is being made to place barriers on importations, but rather that the present competitive position of American importers, manufacturers, merchants, and labor on items under $10 be retained. All of the results of increasing the level of duty-free shipments up to $10 should be considered—not only the savings in the administration of the customs department; as to whether or not there would be a net saving is seriously questioned.

The jewelry industry earnestly petitions that the limit of $1 on duty-free mail shipments be retained and not raised to $10 as proposed.

Quoting from section 321 of the bill, subheading (2) (c):

> The purpose of this section is to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected.

What is the net saving?

Quoting from a letter received from Mr. D. B. Strubinger, Acting Commissioner of Customs, dated March 18, 1952:

> The last estimate of the cost of processing of a mail importation was $1.59 per mail transaction.

Does this mean all mail imports, regardless of value since none is stated? Mr. Strubinger indicates that this estimate was made approximately 4 years ago and that the cost today is undoubtedly higher.

While it may well be expected that on some mail shipments up to $10 the amount of duty would be less than the approximate $1.59 cost of clearance, from the accompanying advertisements it would certainly seem that in many cases duty alone would far exceed this cost. From the report on the hearings, customs duties were the only revenues considered by the Treasury Department in presenting facts in connection with raising the level of mail shipments to $10.

If the present $1 limit were to be changed, in addition to the loss of revenue from customs duties, it is suggested that consideration be given to the fact that no excise taxes, either at the manufacturers' or retailers' level, would be collected—a complete loss of revenue to the Government from this source. Furthermore, because of duty-free shipments, loss of business to American importers, manufacturers and merchants would result in potential lessening of their income taxes.

It might also be appropriate at this time to call your attention to the effect on employment in this country. Many lines are presently facing unemployment, among them soft goods and costume jewelry. Such unemployment would undoubtedly be increased, not only in these two lines but in many others if duty-free shipments up to $10 were permitted. May we respectfully request that all of these effects should be considered, in addition to the statements by the Treasury Department.

Your attention is called to the four advertisements you have before you.

The first is a full-page advertisement of Richard Shops, 180 Regent Street, London, England, taken from the February 24, 1952, issue of the magazine section of the Sunday New York Times. The cost of one insertion is $3,370. Please note that this English firm offers straight skirts for $7.95, indicated approximate duty $2.50; flared skirts for $8.95, indicated duty about $2.75; and matching stole-capes for $4.95, indicated approximate duty $2.50. In connection with this advertisement, your attention is called to question asked by Congressman John W. Byrnes with reference to the proposal to raise the level to $10, at the House Ways and Means Committee hearing, page 122 of the report.

Mr. BYRNES. Is that going to lead to mail-order business on items that run under $10?

Mr. Philip Nichols, Jr., assistant general counsel of the Treasury Department, replied:

Mr. NICHOLS. That is a question I am glad you asked. It is one that I have given a good deal of thought to and mind searching to. If the maximum ceiling of $10 is permitted, we believe that there might be a mail-order business that will spring up in some items. There are items that are dutiable at a fairly high rate that are produced in Europe that are in demand by our citizens here, such as woolens, and it might be profitable to set up a business along those lines.

The above-mentioned advertisement indicates that we are already faced with the "woolen situation"; and with a duty to be collected, how much greater that would be if it were duty-free?

The second advertisement appeared in the magazine section of the New York Times, Sunday, March 16, 1952, and again on April 6. Cherub (Mail Order), Ltd., 35 Hillside, London, England, offers a doll called the Royal Princess for $7 plus as stated "You pay the postman around $3.15 duty." A single insertion cost $385.

The third illustration before you is a copy of one-half of the cover page of the Spring 1952 Catalog of Joyce Wells, Ltd., 6a Mount Street, London, England, which has just been received by a consumer-purchaser in New York and undoubtedly sent to many others in this country. This catalog contains 12 pages—8½ to 11¼ inches—and all but seven of the items—six of them clothing—priced under $10 each. Below the cover page, you will find copy of order slip accompanying the catalog, which depicts two pieces of plated silverware, one piece offered for $8.59, indicated duty $2.04, and the other for $5.28, indicated duty $1.21. (There are many items of silver both sterling and plated, flat and hollow ware, which could be imported for under $10.) Were these pieces to be sold in the United States, 20 percent excise tax should be collected in addition to the duty. It may be presumed that considerable expense was involved in the printing and mailing of these catalogs.

Referring to Mr. Nichols' comment quoted above that "it might be profitable to set up a business along those lines (foreign mail order)," the Richard Shops advertisement of woolen garments and the doll presentation indicate that items under $10, dutiable at a high rate, are presently being offered to the American consumer. From a business standpoint, it would seem that foreign concerns spending large sums for advertising expect a considerable volume of business, notwithstanding the fact that in each instance the duties to be paid are mentioned. Undoubtedly, this type of business would be multiplied many times were firms enabled to use the slogan "Duty free on shipments up to $10."

The fourth advertisement is presented as an illustration of how displays of merchandise priced at less than $10 could be made in the United States by foreign firms through traveling salesmen and other means, and orders taken for shipment from abroad. From the following it might be expected that American firms could establish or take advantage of present foreign offices for shipping purposes in order to meet the competition of duty-free items. The advertisement indicates that it was inserted by Stanley Home Products, Inc., of Westfield, Mass., and Stanley Home Products of Canada, Ltd., of London, Ontario, and appeared in Life magazine, American edition, January 28, 1952, issue; cost $28,900 per single insertion, and all of the items there illustrated are less than $10.

Some of the serious effects of the tremendous potential growth in this type of business must have been recognized in the House when section 321 was being discussed, since the Secretary of the Treasury was given the following power under the proposed bill:

> If a mail-order business should spring up seriously reducing revenue collections on items ordinarily dutiable, action could be taken under the provisions of section 11 to diminish the exemptions or provide exceptions to the general rule.

While the Secretary of the Treasury could take appropriate action, much time would undoubtedly elapse—the horses would have run out of the stable long since—and much damage would have been done to American importers, manufacturers, merchants, and labor in the interim before action could be secured. It certainly would be better, we think, to prevent this situation instead of seeking relief after the door has been opened to an inevitable increase in foreign mail-order business.

In summation, it would seem that if the level is raised to $10, the following results may be expected:

Net loss of revenue instead of saving:

(*a*) Duties on many packages up to $10 would far exceed the cost of clearance, and it is possible that the average duty on all shipments up to $10 would also exceed the cost of clearance;

(*b*) Besides the loss of excise tax, where applicable, both at manufacturers' and retailers' level;

(*c*) Because of duty-free shipments, loss of business to American importers, manufacturers, and merchants would result in potential lessening of their income taxes.

Effect on employment: Many lines are presently facing unemployment problems, particularly soft goods and costume jewelry. These would be increased if duty-free items up to $10 were permitted.

In view of the above facts, on behalf of the thousands of jewelers throughout the country, the plea is earnestly made that the present value of duty-free mail shipments be retained at $1.

Please accept thanks for the time allotted and for your kind consideration.

(The documents referred to are on file with the committee.)

The CHAIRMAN. Thank you, sir, very much.

Mr. GRINBERG. Thank you, sir.

(The following letter supplementing the testimony of Mr. Grinberg was received for the record:)

JEWELERS VIGILANCE COMMITTEE, INC.,
New York, N. Y., March 25, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR: Referring to our letter of January 30, 1952, and statement which accompanied same with reference to H. R. 5505, the customs simplification bill:

Based on additional facts which have since been brought to our attention, a new statement has been prepared (copy enclosed), and we now take the position that the level of $1 for duty-free mail packages should be maintained for all items, not alone those subject to the retail-excise tax.

We would request that in considering our position in this matter, the enclosed be substituted for our former statement. Your kind acknowledgment of February 1 stated that you would have our letter and statement made a part of the printed record of the hearings. We ask that you please substitute the enclosed statement for that purpose as well.

Your earnest consideration is requested and will be appreciated.

With kind regards,

Sincerely yours,

P. IRVING GRINBERG,
Executive Vice Chairman.

STATEMENT OF THE JEWELERS VIGILANCE COMMITTEE, INC., WITH REGARD TO H. R. 5505 (CUSTOMS SIMPLIFICATION BILL)

H. R. 5505, known as the customs simplification bill, has been passed by the House of Representatives and is now before the Senate Finance Committee for consideration.

Section 321—Administrative exemptions, heading (b) reads:

"(b) Subject to such exceptions and under such regulations as the Secretary of the Treasury shall prescribe, articles (not including alcoholic beverages, manufactured tobacco, snuff, cigars, or cigarettes) shall be admitted free of duty and of any tax imposed on or by reason of importation in the following cases:"

Subheading (1) applies to baggage accompanying an individual.

Subheading (2) reads as follows:

"(2) When the articles are imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States and the aggregate value of all articles in the shipment is not over $10 if the articles are intended for the personal or household use of the consignee and not for sale, or $5 in any other case. The privilege of this subdivision shall not be granted to any c. o. d. shipment or in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision."

"(c) The purpose of this section is to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected. Therefore, the Secretary of the Treasury is authorized by regulations to diminish any dollar amount specified heretofore in this section and to prescribe exceptions to any exemption provided for in this section whenever he finds that such diminutions or exceptions are consistent with the purpose above stated, or are for any reason necessary to protect the revenue or to prevent unlawful importations."

House Report No. 1089 accompanying H. R. 5505 contains the following statement in connection with section 321:

"* * * it is the desire of the committee that the Secretary of the Treasury shall exercise his authority under this section such a manner that the section will not be subjected to abuses by mail-order businesses engaging in the direct shipment of dutiable articles to purchasers in the United States."

Notwithstanding the fact that the Secretary of the Treasury would have the authority to reduce abuses which might occur should such mail-order business get out of hand, it certainly would be better to forestall the necessity of relief for American manufacturers and merchants by not opening the door to an inevitable large increase in foreign mail-order business.

Letter received from the Bureau of Customs dated March 18, 1952, indicates that the last estimate of the cost of processing of a mail importation made about 4 years ago was approximately $1.59 per mail transaction and would be somewhat higher today.

The following facts are called to your attention relative to the claim of the Bureau of Customs that the cost of clearance of these small packages is more than all duties and revenue obtained (quoting from the above-mentioned letter):

"With respect to the items of the kind mentioned in your communication, alcoholic perfumes are dutiable at the rate of 20 cents per pound and 18¾ percent ad valorem under paragraph 61, Tariff Act of 1930, as modified. Handbags wholly or in chief value of leather (except reptile leather) are dutiable at the rate of 20 percent ad valorem under paragraph 1531, Tariff Act of 1930, as modified. Other leather goods subject to retail excise tax are dutiable at rates ranging from 12½ to 25 percent ad valorem depending upon their nature."

It would seem that the duties would exceed the $1.59, or somewhat higher, cost of per package handling; incidentally, no mention is made of the loss of revenue to the Government on foreign mail shipments from the collection of the 20-percent excise tax on these items if sold in the United States.

There are unlimited potentialities. A number of mail-order catalogs have recently been received in this country from abroad. Attention is specifically called to two very recent advertisements taken from the New York Times magazine section:

Attached hereto is a full-page advertisement (which cost $2,337.50 for one insertion) of Richard Shops, 190 Regent Street, London, England, taken from the February 24, 1952, issue. You will note that they offer straight skirts for $7.95, flared skirts for $8.95, and matching stole capes for $4.95, and indicate that customs duty of about $2.50 for the straight skirt, $2.75 for the flared skirt, and $2.50 for the stole cape is to be collected by the postman.

In the March 16, 1952, issue, Cherub (Mail Order) Ltd., 35 Hillside, London, England, offers a doll called the Royal Princess for $7 plus "You pay postman around $3.15 duty." Just to quote one item from catalog of Joyce Wells, Ltd., 6a Mount Street, London, England, there is included among many other items under $10 a chased flower bowl described as a Georgian period reproduction of old Sheffield plate for $8.59 "pay United States duty, $2.04."

Here are vivid illustrations of items where the duty alone far exceeds the cost of handling, and are rather contrary to the statement taken from the above-mentioned letter of March 18:

"From the foregoing, it would appear that the collection of customs duties on shipments of these articles valued at not more than $10 per shipment would seldom result in the collection of a revenue greater than the cost of collecting the revenue."

When a firm spends $2,337.50 for a single advertisement, it must expect quite a volume of business.

The fact that foreign houses find it profitable to advertise their mail-order business stating duties to be paid, would indicate a tremendous increase in this type of business, which could be expected if the level were raised from $1 to $10 on duty-free mail shipments. Visualize the effect on the buying public if the present statement "Duty to be collected by postman $____" were to be replaced by the words "Duty-free."

Referring to further statement in the March 18 letter of the Bureau of Customs:

"However, if a mail-order business should spring up seriously reducing revenue collections on items ordinarily dutiable, action could be taken under the provisions of section 11 to diminish the exemptions or provide exceptions to the general rule."

In discussing this matter with officials of the Treasury Department it was agreed that while the Secretary of the Treasury could take such action, much time would undoubtedly elapse (the horses would have run out of the stable

long since) and much damage could be done to American labor, manufacturers, and merchants in the interim before action could be secured.

In summation, it would seem that if the level is raised to $10 the following results may undoubtedly be expected:

Loss of revenue:

(*a*) Duties to be collected would in most instances far exceed cost of clearance by customs;

(*b*) Loss of excise tax, where applicable, both at retail and manufacturers' level;

(*c*) Because of duty-free shipments, loss of business to American manufacturers and merchants would result in potential lessening of their income taxes to be paid.

Effect on employment: Many lines are presently facing unemployment problems, particularly soft goods and costume jewelry. These would be increased if duty-free items up to $10 were permitted.

In view of the above facts, on behalf of the thousands of jewelers throughout the country we earnestly plead that the present value of duty-free mail shipments be maintained at $1. In making this plea, we respectfully call your attention to the fact that to raise the level to $10 would create unfair competition to labor and to manufacturers and merchants throughout the country who deal in items up to $10. Furthermore, Congress has been asked to close tax loopholes; raising the level to $10 would result in loss of revenue to the Government instead of a saving in customs' cost of operation, since the amount of duty, plus excise taxes at the manufacturers' or retailers' level where applicable, and in addition the amount of income tax which would be paid by American manufacturers and merchants would far exceed the cost to the Treasury of clearance of these mail packages.

JEWELERS VIGILANCE COMMITTEE, INC.,
New York, N. Y., March 21, 1952.

COMMISSIONER OF CUSTOMS,
Treasury Department, Washington, D. C.

(Attention of Mr. D. B. Strubinger, Acting Commissioner of Customs.)

SIR: Thanks for your letter of March 18, in which reference is made to our letter of February 11 in connection with our position relative to the proposed amendment to section 321 of the Tariff Act of 1930, which would authorize the Secretary of the Treasury to "permit importation by mail free of duty and internal-revenue tax of articles (not including alcoholic beverages, manufactured tobacco, snuffs, cigars, or cigarettes) when the aggregate value of all the articles in a shipment is not over $10, if the articles are intended for the personal or household use of the consignee and not for sale, or $5 in any other case." From additional information received since our letter of February 11, we believe even more firmly that the level of duty-free mail packages should be kept at $1.

Your statement that "the last estimate of the cost of processing of a mail importation was $1.59 per mail transaction" and that it "is undoubtedly higher now" is duly noted; also your comments on the duties applicable to alcoholic perfumes and handbags:

"With respect to the items of the kind mentioned in your communication, alcoholic perfumes are dutiable at the rate of 20 cents per pound and 18¾ percent ad valorem under paragraph 61, Tariff Act of 1930, as modified. Handbags wholly or in chief value of leather (except reptile leather) are dutiable at the rate of 20 percent ad valorem under paragraph 1531, Tariff Act of 1930, as modified. Other leather goods subject to retail excise tax are dutiable at rates ranging from 12½ to 25 percent ad valorem depending upon their nature."

It would seem that the duties would exceed the $1.59 cost of per package handling, and incidentally you make no mention of loss of the revenue which would accrue from collection of the 20-percent excise tax on these items if sold in the United States.

There are unlimited potentialities; and mail-order catalogs have recently been received in this country from abroad. We would specifically call your attention to two very recent advertisements taken from the New York Times magazine section.

Enclosed herewith is a full-page advertisement (which costs $2,337.50 for one insertion) of Richard Shops, 180 Regent Street, London, England, taken from the February 24, 1952 issue. You will note that they offer straight skirts for $7.95, flared skirts for $8.95, and matching stole capes for $4.95, and indicate

that customs duty of about $2.50 for the straight skirt, $2.75 for the flared skirt, and $2.50 for the stole cape is to be collected by the postman.

In the March 16, 1952, issue, Cherub (mail order), Ltd., 35 Hillside, London, England, offers a doll called the Royal Princess for $7 plus. "You pay postman around $3.15 duty."

Here are vivid illustrations of items where the duty alone far exceeds the cost of handling ($1.59) and are rather contrary to your statement:

"From the foregoing, it would appear that the collection of customs duties on shipments of these articles valued at not more than $10 per shipment would seldom result in the collection of a revenue greater than the cost of collecting the revenue."

When a firm spends $2,337.50 for a single advertisement, it must expect quite a volume of business.

Referrring to your further statement:

"However, if a mail-order business should spring up seriously reducing revenue collections on items ordinarily dutiable, action could be taken under the provisions of section 11 to diminish the exemptions or provide exceptions to the general rule"—

it was my privilege to spend some time recently in the office of Mr. Charles R. McNeill, Assistant General Counsel of the Treasury when among other things we discussed the above. It was agreed that while the Secretary of Treasury could take such action, much time would undoubtedly elapse (the horses would have run out of the stable long since) and much damage could be done in the interim before action could be secured.

In summation as we see it—if the level is raised to $10, the following results may be expected:

Loss of revenue: In most cases the cost of clearance would be exceeded by (*a*) the duties to be collected; (*b*) loss of excise tax, where applicable, both at retail and manufacturers' level; and (*c*) because of duty-free shipments, loss of business to American manufacturers and merchants resulting in potential lessening of income taxes to be paid.

Effect on employment: Many lines are presently facing unemployment problems, particularly soft goods. These would be increased if duty-free items up to $10 were permitted.

I am frequently in Washington and shall take the liberty of telephoning to your office in the hope that I may call upon you.

Very truly yours,

———— ————, *Executive Vice Chairman.*

P. S.—The fact that foreign houses find it profitable to advertise their mail-order business stating duties to be paid, would indicate a tremendous increase in this type of business, which could be expected if the level were raised from $1 to $10 on duty-free mail shipments. Visualize the effect on the buying public if the present statement "Duty to be collected by postman $————" were to be replaced by the words "Duty free."

The CHAIRMAN. The next witness is Mr. Wellman. All right, Mr. Wellman.

STATEMENT OF ARTHUR O. WELLMAN, PRESIDENT, NICHOLS & CO., INC.

Mr. WELLMAN. Good morning, Senator.

The CHAIRMAN. Good morning. You may identify yourself, Mr. Wellman, for the record.

Mr. WELLMAN. My name is Arthur O. Wellman, Senator; I am president of Nichols & Co., Inc., of Boston, Mass., worsted-top manufacturers, and I am a director of the National Association of Wool Manufacturers.

Wool tops are a recognized commercial item. Fully two-thirds of all the apparel wool consumed in the United States is manufactured into top before it is spun into yarn for use in weaving or knitting.

Topmakers buy wool all over the world, wherever it is sold at the lowest price, and they bring that wool to a combing plant where it

is sorted to grade, scoured, carded, and combed into balls of top weighing about 10 pounds, ready for processing into yarn. In the foregoing operations, defective and short-wool fibers are removed so that the spinner has an organized and highly uniform strand of wool fibers with which to work.

During recent past years the Treasury Department has announced frequently that wool imports were the largest single source of customs revenue, and for many of those years Nichols & Co., Inc., in the capacity of wool importers, has paid more duty than any other concern. For example, for the 12-month period ending August 31, 1951, we paid the United States Government over $6,000,000 in customs duty.

The topmakers in this country are deeply disturbed by the circumvention of congressional intent, as represented in the Tariff Act of 1930. This has become apparent in the growing importation of wool top from foreign countries, particularly the Argentine and Uruguay. These countries maintain multiple rates of exchange favoring the export of this processed wool to this country. For example, in the Argentine the rate of exchange for wool exports is 5 pesos to the American dollar. On processed wools the rate of exchange is 7½ pesos to the dollar. Thus there is a bounty on the export of the top equal to 50 percent of the value of the raw wool from which the top is made.

Evidence of the effect of these subsidies is shown in table 1 attached to this statement which may be summarized by saying that from zero in 1947 Argentine top entered here for consumption soared to 3,791,000 pounds in 1951. Likewise, top entering from Uruguay mushroomed from zero in 1947 to 3,773,000 in 1951. In total, the inroad amounts to 7,564,000 pounds in the short span of 5 years, or 4 years of actual imports.

This committee has been told by Frank A. Southard, Jr., special assistant to Secretary John Snyder that—

> Movement of wool tops into this country in the past few months has stopped completely or been exceedingly small.

Perhaps Mr. Southard has been too occupied on other important matters to realize that textile activity in this country for some time has been badly depressed; that Congress and various Government agencies are being urged to take unusual measures to stem this recession in activity and increase in unemployment—especially in textiles. But as to this matter of tops imports on which Mr. Southard spoke, let us look at the record.

Official figures on arrivals of wool tops in this country (table II) show that in only 3 of the last 6 months of 1951 have tops imports fallen below 1 million pounds a month. In January 1952, the latest month published, they were back up over that million mark. The great bulk is from Argentina and Uruguay, with the latter showing the greatest strength from April of last year onward.

This fact takes on added importance when we examine the official registration of bales sold to export from Montevideo. For the first 6 months of the current season, from October 1, 1951, to March 29, 1952, 13,296 bales of tops had been registered for export to the United

States. As a bale of tops weighs about 550 pounds this means that registrations are at the rate of over 1,000,000 pounds a month from Uruguay alone. This is greater than the 1951 rate of imports of Uruguayan tops for consumption. There are many wool-textile operators in this country without jobs who would welcome this work and be better American consumers for it.

It may be asked, why do we buy these foreign tops if their importation has undesired effects on textile operations here. In answer to that I submit the case that Senator O'Mahoney has reported to you and Government agencies concerned. Fifty thousand pounds of wool were offered at a clean-basis price of $1.42 a pound or the buyer could purchase an equal weight of wool tops at $1.41 per pound. The cost of converting wool tops was then about 48 cents a pound. Gentlemen, if you were operating in a highly competitive market which would you buy?

I have shown you the impressive extent to which our markets are being invaded by foreign products subsidized in their export by multiple-exchange rates. I have given you an illustration of the distortion of values resulting from such bounties. These place it beyond the power of one operating in a competitive market to ignore. In closing, I would like to show how you, the Congress, can reassert its original intent and proper authority in this matter.

The bill before you, H. R. 5505, in section 2 (c) contains two proposed amendments to section 303 of the Tariff Act of 1930. We respectfully urge that you accept the first amendment—page 2, lines 11 through "imposed on the merchandise." on page 3, line 2—and reject the second commencing on line 2 of page 3 with the words "Such countervailing duty shall" through line 15 of that page.

The effect of this action would be to make unequivocally clear congressional intent respecting the use of countervailing duties to offset bounties or grants directly or indirectly bestowed by foreign interests upon their exports which are subject to duty as United States imports. There is strong indication that this relatively simple scheme of multiple exchange rates, in the light of the Treasury Department's reluctance to act, is proving a contagious method of circumventing, if not negating, our tariff. This action would also eliminate the insertion of the policy of "locking the barn after the horse is stolen." If it takes Treasury years to find a "bounty" in multiple rates of exchange, how dangerously long will it require to determine that an American industry is "injured" or "retarded"?

Finally, if the above suggestion does not win your approval, we urge you strike out section 2 (c) of H. R. 5505 in its entirety.

That part of section 2 (c) which would be deleted reads as follows:

> Such countervailing duty shall be imposed only if the Secretary of the Treasury shall determine, after such investigation as he deems necessary, that an industry in the United States is being or is likely to be injured, or is prevented or retarded from being established, by reason of the importation into the United States of articles or merchandise of the class or kind in respect of which the bounty or grant is paid or bestowed. The exemption of any exported article or merchandise from a duty or tax imposed on like articles or merchandise when destined for consumption in the country of origin or exportation, or the refunding of such a duty or tax, shall not be deemed to constitute a payment or bestowal of a bounty or grant within the meaning of this section.

(The tables referred to are as follows:)

TABLE I.—*Imports into United States for consumption of wool and hair tops from Argentina, Uruguay, and all countries*

[In thousands of pounds]

Year	Argentina	Uruguay	Both	Other countries	Total
1947	None	None	None	264	264
1948	137	27	164	3,770	3,934
1949	206	230	436	1,759	2,195
1950	1,590	1,076	2,666	1,539	4,205
1951	3,791	3,773	7,564	2,837	10,401

TABLE II.—*General imports into United States of wool and hair tops*

[In thousands of pounds]

Period	From—		Total
	Argentina and Uruguay	Other countries	
1951—July	897	279	1,176
August	862	250	1,112
September	633	131	764
October	596	488	1,084
November	460	106	566
December	435	198	633
1952—January	819	194	1,013

Source: Boston Wool Trade Association, special Bureau of Census tabulations.

Mr. WELLMAN. Mr. Chairman, you probably wonder why I am appearing here today, since I have probably been the largest buyer of these tops in South America. I have made some money on them, but I think the currency manipulation should be eliminated because it is throwing our employees out of work.

These tops are coming in in such a big way that it has depressed the textile business terribly. I think it is more to blame for the depression in the textile business than anything today, and should be stopped if there is any possible way of doing so.

The CHAIRMAN. Thank you very much, sir.

Senator BUTLER. Mr. Wellman, evidently you read the testimony that was given by a representative of the Treasury Department the other day?

Mr. WELLMAN. Yes, sir.

Senator BUTLER. I questioned him about how long it was going to take them to establish a countervailing duty.

Mr. WELLMAN. Yes, sir. We are very much upset about it. Certainly, for your information, I do not believe this has been brought out anywhere, but Uruguay can make 50,000,000 pounds of tops a year, and Argentina can make another 50,000,000. The total of these two is half the amount that is made in this country. In other words, they could throw half of our employees out of the combing business in the textile industry in America if this is not stopped.

Senator BUTLER. Thank you.

The CHAIRMAN. Thank you very much, Mr. Wellman.

Mr. WELLMAN. Thank you, sir.

The CHAIRMAN. Mr. Altschuler. You may be seated and identify yourself for the record.

STATEMENT OF BENJAMIN M. ALTSCHULER, COUNSEL, CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. ALTSCHULER. My name is Benjamin M. Altschuler. I am here as counsel for the Customs Brokers and Forwarders Association of America, Inc., whose address is 8 Bridge Street, New York.

I have already delivered to the clerk a written statement which I would like to have entered into the record.

The CHAIRMAN. It will be entered in full, yes; it will be entered into the record.

Mr. ALTSCHULER. And I should like, in addition thereto, to make some brief comments.

The CHAIRMAN. Yes, sir; we will be glad to hear you.

Mr. ALTSCHULER. The Customs Brokers and Forwarders Association of America has a membership of over 400.

They are located in all of the principal ports of the United States. A customshouse broker is the first person outside of the Government who deals with merchandise when it arrives in the United States, and as foreign freight forwarders they are the last people outside of the Government representatives who deal with merchandise exported.

They are, therefore, very much concerned with any legislation or procedure that touches upon the import or export of merchandise.

As an association they endorse many of the provisions of this bill. The purpose of the bill, a stated by the Treasury Department, is to simplify the operation, to reduce expenses, and to reduce the delay incidental to administration, and to eliminate inequities which would add to the difficulties of enforcement.

Customshouse brokers favor these principles, but although the association favors many of the provisions, it finds that there are some which need modification or amendment.

First of all, I would like to speak of section 13 of the bill, which deals with value.

Now, the bill proposes the elimination of foreign value as a basis for determining value. Our association favors that, but we do believe that this section is faulty in that it does not set a definite time limitation for the appraiser to appraise his merchandise.

Under existing law and under this proposed amendment, the appraiser of the United States can take as long as he likes, and when I say as long as he likes, as much as a dozen years if he cares to, to appraise an importer's merchandise, and it happens in many cases that an importer has distributed his merchandise and it has been consumed long before the appraiser determines what the value is.

Now, we say that particularly with the elimination of foreign value as proposed in this bill, the appraiser of the United States Customs Service ought to be able within some time limitation, be it 4 months or 5 months or 6 months, or whatever you gentlemen feel is right, he should have some limitation on the time during which he should appraise.

Senator BUTLER. That appeared to be the only explanation that the Treasury representative had the other day in reply to my questions about their not establishing a countervailing duty, because they had not been able to establish a value.

Mr. ALTSCHULER. Well, we think that there comes a time when he has to "fish or cut bait." We do not think he can do any more in 6 years than he can do in 6 months.

The second proposal that we think is necessary in connection with this section 13 is that the appraiser should be obliged to state in his appraisement what is the basis of his value, that is, whether it is export value or United States value or comparative value; that the importer should not have to guess at what the appraiser did as his basis of value.

After all, this is a fair dealing, and there is no reason why the appraiser should not say to the importer, "I have appraised your merchandise on the basis of export value," or "I have appraised your merchandise on the basis of United States value." There ought to be no secret about it.

Now, the second problem which I would like to take up is the one under section 17 of the proposed bill. Under that proposal the Treasury Department would do away wth the present right of an importer to amend his entry, but would retain duties for undervaluation albeit in a different sense than it retains it now.

We feel that it is not fair to an importer to say, "Once you have filed your entry, which must be done within 48 hours after importation, you may never come in and file an amended document, even though you have information showing that the information which you first gave to the Government was not correct."

Whether the new information is favorable to the Government or to the importer makes no difference. He should be permitted to put in a document filed with the Government his amended figures.

It is true that under the proposal he could come and tell the Government about it, but he wishes to put himself on record so there can be no mistake about it.

In the same section the Government proposes to retain the duties for undervaluation although they are not referred to in the Tariff Act as penalty duties—they are—and there is no ceiling on them.

Now, we believe it is entirely unnecessary to have these penal duties, and I should like to refer you to the statement of Assistant Secretary Graham on page 7, in which he states:

> Of course, if there is actual fraud, other provisions of the customs laws can be invoked—

and that is our position.

If the man has been honest, then there is no reason for imposing penalties, penal duties. If he has been dishonest, there are other administrative and criminal provisions under which he may be punished and we, therefore, think that these penalty duties under section 489 should be eliminated entirely.

Now, the third proposal we wish to make is in connection with section 15 of the proposed bill which deals with certified consular invoices and informal entries, and I would like to emphasize there, both from experience as a former Government officer in the Treasury Department and from experience representing importers in the customs service and this Brokers Association, that it would be faulty to raise the ceiling from $100 to $250 under which importers may enter their goods in an informal basis.

With modern methods of transportation, with airplanes bringing cargo daily, a man could do quite a business in having shipments up to $250 arrive and have them entered informally without any consular invoice. An informal entry is one where the inspector does the whole

job at the pier or at the airport, and it does not have the same safeguards as a formal entry.

We think it is manifestly unfair that importers of larger shipments should go through the formal entry, and importers who bring in many shipments of less than $250 do it in an informal way.

I have a letter here from one of our members on one of the borders in which he writes:

A large client of ours frequently ships small samples of one of his products. The material has been given three different classifications on Forms 5119.

That is the informal entry.

Though customs laboratory analysis of large importations entered formerly has established as proper a fourth and different classification, the inspectors making these informals continue to use the several others despite our protest. The shipper cannot understand how the same product can carry duty at 6¼ percent up to 25 percent, and that his own truck driver seems to be able to get lower rates makes him wonder if we are treating him carelessly.

That is the Canadian border or Mexican border situation, where a truckman brings along at the present time a shipment under $100 in value and enters it informally and he gets a different rate of duty and a different value than someone who makes a formal entry. Now we say increasing that to $250 will only multiply the mischief.

There are just a couple of more things which I wish to speak about, and one of those is we understand the Customs Bar Association has proposed in its statement that a provision be written into this law compelling the deposit of duties where there is an appeal to the appraisement made by the appraiser.

Now, we feel, as a brokers association, that it is very salutary to have all duties deposited as soon as it is determined that they are or may be due. We think this is consonant with the pay-as-you-go-along plan in income taxes, and we think that it is always helpful for an importer to have paid his duties before he sells his merchandise so that he knows in pricing his merchandise pretty well what it is going to cost him and, therefore, we favor the deposit of duties with the Government as soon as the Government has estimated or calculated that there are any more duties due.

One other matter which I would wish to mention, and that is in connection with section 10 of the proposed bill, amending some of the draw-back provisions. There are limitations of 1 year and 3 years, respectively, in those provisions, and we ask that those limitations be increased to 3 years and 5 years, respectively, giving the importer a longer time wtihin which to process his goods and export them.

Thank you very much, gentlemen.

Senator JOHNSON (presiding). We thank you, sir.

Any questions?

(The prepared statement of Benjamin M. Altschuler is as follows:)

STATEMENT OF BENJAMIN M. ALTSCHULER AS COUNSEL FOR THE CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC., ON THE CUSTOMS SIMPLIFICATION ACT OF 1951 (H. R. 5505)

My name is Benjamin M. Altschuler. I am a member of the firm of Altschuler & Morrison, attorneys, 39 Broadway, New York 6, N. Y., and I am counsel to the Customs Brokers and Forwarders Association of America, Inc., of 8–10 Bridge Street, New York 4, N. Y. I am making this statement as their representative.

This association, on whose behalf I am making this statement, was organized over half a century ago and now consists of more than 400 members, all of whom

are either licensed customhouse brokers or experienced foreign freight forwarders. Its members are located in most of the principal ports of the Nation. This association is deeply concerned with legislation affecting the foreign trade of this country. The members of this assoc ation are agents of importers and exporters of commodities to and from all parts of the world. As customs brokers, they are the first ones to act on behalf of the importers in connection with the merchandise arriving from abroad. Foreign trade is the lifeblood of the members of this association, and anything affecting foreign trade is of prime interest to them?

The Supreme Court of the United States has stated that "the business of a customhouse broker is related to the process of foreign commerce," and "the customhouse broker, in clearing shipments, aids in the collection of customs duties and facilitates the free flow of commerce betwee na foreign country and the United States."

The purpose of the bill, as stated by the Treasury Department in its analysis, is to amend the Tariff Act of 1930, as amended, in order to simplify its operation, to reduce expenses and delay incidental to its administration, and to eliminate inequities which add to the difficulties of enforcement. With all of these good principles and purposes, we are in accord. It is the customhouse broker who, day after day, has to carry the load of finding his way through burdensome tariff laws and regulations. Anything which lightens that burden will be helpful. While we are in favor of many of the proposed provisions of this bill and urge their enactment into law, we must definitely suggest that some of the proposals will invite great difficulties and problems and will result in more headaches for the customhouse broker and the importers. We also believe that in some of the provisions, further simplification and reform is needed.

Section 10 of the proposed bill deals with certain amendments to section 313 of the Tariff Act of 1930 as amended. With these proposals we are wholly in accord.

We propose, in addition thereto, that section 313 (b) be amended by substituting the phrase "within a period not to exceed 3 years" for the phrase "within a period not to exceed 1 year."

We also propose that section 313 (h) be amended by substituting the phrase "within 5 years" for the phrase "within 3 years."

Section 13 of the proposed bill: We feel that the proposal to eliminate "foreign value" as a basis for determining value is entirely a matter for congressional policy, but we do believe that in two following respects the proposal is defective:

(1) The appraiser should definitely state in his final appraisement what was his basis of value, i. e., "export value," "United States value," etc.

(2) There should be a definite time limitation within which the appraiser should complete his appraisement. The failure to have such a time limitation makes it virtually impossible for an importer to calculate his costs in many cases until long after the merchandise has been sold and consumed.

Section 15 of the proposed bill: We are vigorously opposed to the proposed changes in this section because they will permit certain importers of certain commodities to carry on their business with customs in an informal manner, while their competitors go through formal procedure. We have no objection to lessening the formality on noncommercial shipments, but we definitely oppose lessening the formality on commercial shipments regardless of value. With modern means and speed of transportation an importer could do quite a large import business with individual shipments in value not greater than $250. If no consular invoice is required, and no formal examination and appraisal by the appraiser, that importer's duty payments would depend upon a single inspector and his individual shipments might well be different in appraised value and even in classification from those entered formally by his competitors. Likewise, at the borders of the United States, where truckmen who are not common carriers are permitted to make entry of goods belonging to other persons, under existing customs regulations, there is an opportunity for considerable abuse of the customs process which will only be amplified by increasing the ceiling on informal entries from $100 to $250.

Section 17 of the proposed bill: This proposed section eliminates amendment of entries and deals with duties on undervaluation. The proposal which would abolish the right of amendment of an entry under any circumstances once an entry has been made is too harsh and is entirely unnecessary. There are situations where, from the point of view of the Government, of the customhouse brokers, and of the importer it would be salutary to permit amendment of entries. Without the right to amend the entry, the additional duties provided

for in this section may well be imposed on an innocent person who, if permitted to amend his entry, could have avoided these additional duties and yet paid to the Government what was lawfully due.

We believe that the concept of additional duties is wrong and it should be discarded entirely. If there is an honest dispute between an importer and the Government, the dispute should be resolved in the proper forum without any penalty. If an importer is fraudulent or deceptive, there are other provisions in the law which amply punish him, either through criminal prosecution or civil penalties against him personally or against the goods imported.

We believe the above-mentioned observations are of great interest to the entire importing community and it is for this reason that we respectfully present them to the attention of this committee.

Senator JOHNSON. Mr. Max Berkowitz, National Authority for the Ladies' Handbag Industry. You may proceed in your own way.

STATEMENT OF MAX BERKOWITZ, CODIRECTOR, NATIONAL AUTHORITY FOR THE LADIES' HANDBAG INDUSTRY

Mr. BERKOWITZ. Mr. Chairman and gentlemen, my name is Max Berkowitz. I am a director for the National Authority for the Ladies' Handbag Industry, a national trade association of handbag manufacturers. There are 250 handbag manufacturers in our orgnization and they produce approximately 70 percent of the total production of handbags in the United States.

We have appeared before this committee on several occasions in the past, and have always received the most considerate and courteous attention for which I wish to sincerely thank you.

The two major problems confronting the handbag industry today, and for the past few years, are the 20-percent excise tax on handbags and the importation of handbags from foreign countries. These two problems have been the subject of many industry-wide meetings, formation of committees, and considerable other activity to combat and eliminate the havoc, unemployment, and insolvency that has been wrought by these two problems.

We have appeared before congressional committees before, on each of these subjects, separately, and have shown by conclusive facts and figures that each in its own way has contributed to creating a depression in the handbag industry. Together, the excise tax and the imports, combine to make an insurmountable obstacle to operating a profitable business. The handbag industry has shrunk from 800 firms doing a wholesale volume of $200,000,000 in 1946 to 500 firms doing $135,000,000 in 1951.

The firm that shows a profit in the handbag industry is a rarity. This deplorable condition, which is a sad commentary on the American business scene, is directly attributable to the inequitable, unsound, and discriminatory features of the 20-percent excise tax and the reduction of the rate of duty.

This committee is fully familiar with both of these matters, and I feel certain, were it not for the far more important considerations of international events, and national safety and stability, each of these problems would have received favorable consideration from this committee before.

The excise tax and the importation of handbags each have been an enigma to the industry, as I have said. Now, along comes the customs simplification bill, section 321, and in one, neat little package, all tied up with a pink ribbon—we have all the most undesirable features of

the excise tax and the importation problems, coming into being, with greater force and impact, than we thought possible. Section 321 compounds the felony of the tax and the imports.

Raising the exemption level from $1 to ' 10 on duty-free shipments, as provided for in section 321, falls particularly hard on the handbag industry.

Handbags have always been bought as gift items. Statistics on the sale of handbags by retailers show the largest percentage of handbags are sold for Christmas, Easter, and Mother's Day. The excise tax has greatly reduced the sale of handbags for gift purposes. Women prefer to put the amount equal to the excise tax they would have to pay on a handbag into some other apparel accessory that is not taxed.

Incidentally, the handbag is the only item of women's apparel, with the exception of fur coats, that is subject to the 20-percent excise tax. Raising the exemption to $10 will place the domestically produced handbag at a decided disadvantage as compared with the foreign-made handbag sold through mail order, at gift seasons. The foreign handbag, not being subject to excise tax and duty, would be so much cheaper than a comparable American handbag that the little business we do around Christmas, Easter, and Mother's Day would also be lost. If it weren't for these three selling periods there wouldn't be a handbag industry at all. There are enough obstacles and hardships facing the industry now, please let's not add another one—a disastrous one.

We don't know what the quantities and what the dollar value is of the handbags that are imported free of duty as passengers' baggage. We believe that it is very considerable and represents a very serious inroad to the American handbag industry. Although our product is at a disadvantage, as compared to other commodities, because of the excise-tax burden, we have felt there is little that could be done in this regard. Travelers abroad, and to South America, will always buy souvenirs and other commodities competitively priced and bring them into the country duty-free within the limitations provided.

However, raising the exemption from $1 to $10 on articles imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States will be an open invitation to circumvent the present $500 limitation on articles brought in on the person. When the limitation is $1, a woman could not consider the purchase of a handbag and mail it into the country. Raising it to $10 makes it practical, feasible, and worth while, particularly as to handbags, since a recent analysis of the average value of imported leather handbags shows that the average value of handbags from Guatemala for the year 1951 was $3.33; from the United Kingdom, $5.59; from France, $7.09; from Italy, 6.19. If it is raised to $10, a woman could buy a handbag for $10 each in France, Italy, Spain, and England, have each purchase shipped separately into the United States and not be required to pay any duty on these handbag purchases.

I would like to quote from subheading (2) of section 321 which would make this possible:

> When the articles are imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States and the aggregate value of all articles in the shipment is not over $10, if the articles are

intended for the personal or household use of the consignee and not for sale, or $5 in any other case. The privilege of this subdivision shall not be granted to any c. o. d. shipment or in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision.

Multiply this situation by the great number of other commodities that are sold for more than $1 and less than $10 and you have a condition, that to a great extent will nullify the Government's intention of limiting articles brought in on the person up to $500 duty free.

Under subheading (C) of section 321 the Secretary of Treasury is authorized to diminish the $10 to a lesser amount whenever there is an abuse of this privilege. This is what I would call a "little escape clause." All of you are familiar with the extreme features of the escape clause under the general agreement on tariffs and trade and know that it is most difficult, to put it mildly, to have the escape clause invoked under the general agreement. The escape clause in this bill will be just as difficult and impractical after the damage has been done.

In the past few years a great deal of reptile, alligator, and other leather-handbag business has been lost to Argentina, Guatemala, and Cuba. The duty on reptile handbags is 17½ percent and on leather 20 percent. However, by virtue of a trade agreement with Cuba, Cuban products are entitled to a 20-percent preferential rate and so the rate on reptile handbags from Cuba is 14 percent.

It is interesting to note what this preferential treatment on duty has meant to the handbag industry. In 1939 here were less than 500 pieces imported into the United States from Cuba. In 1950, there were 84,239 reptile handbags valued at $534,156 imported from Cuba. This would make the average value about $6. Raise the $1 limitation to $10, under section 321, and a mail-order business will spring up that will make it impossible to compete with Cuba. The preferential duty is bad enough, add to this—not subject to the 20-percent excise tax, and the domestic product hasn't a chance.

It is our understanding that the reason for the change from $1 to $10 is because a saving of $1 per package is involved as this is the approximate cost-of-customs clearance. As concerns handbags, there would be no savings, but rather a loss since as I said before, the average value of leather handbags imported from Italy in 1951 was $6.19, which would make for a duty of $1.23; from France $7.09, which would make for a duty of $1.41; from the United Kingdom $5.59, which would make for a duty of $1.11. These are the principal European exporting countries. At the 20-percent rate of duty which applies in this case, and 20-percent excise tax instead of a saving, there would be a loss to the United States. This is a case of penny-wise and pound-foolish.

The handbag industry is a small-business industry. There are no defense contracts in the industry. Congress has declared it to be in the national interest that small business be preserved as a vital force and basic element of the national economy. The excise tax, imports, and bad business generally, in the soft-goods industries, have been whittling the handbag industry and gnawing at its vitals. While raising the limitation from $1 to $10 is not a momentous thing in itself, it is an important factor to a distressed industry. It portends greater instability and chaos.

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I have given you the handbag manufacturers' views on this matter. I cannot believe it is sound policy to simplify things, at the sacrifice of an American industry.

We are confident that this committee will not force these undesirable results to come to pass. We respectfully urge that the current $1 limitation on duty-free shipments remain untouched.

Thank you, sir.

Senator JOHNSON. Thank you. You have presented your case very well, Mr. Berkowitz.

Mr. BERKOWITZ. Thank you, sir.

Senator JOHNSON. Mr. Benjamin Shapiro, National Handbag and Accessories Salesmen's Association, Inc.

Mr. Shapiro, you may proceed in your own way.

STATEMENT OF BENJAMIN SHAPIRO, PRESIDENT, NATIONAL HANDBAG AND ACCESSORIES SALESMEN'S ASSOCIATION, INC.

Mr. SHAPIRO. Thank you, sir.

My name in Benjamin Shapiro, and I am president of the National Handbag and Accessories Salesmen's Association.

Senator JOHNSON. You may be seated.

Mr. SHAPIRO. I am also vice president of the National Council of Wholesale Salesmen. Our headquarters are at the Warrington Hotel, 161 Madison Avenue, New York City.

I am a salesman, and I have not prepared an address. I, perhaps, if necessary, will file one.

I want to record the feelings of our organization relative to section 321 of the bill, House bill 5505.

We are opposed to it, and there are certain things that are of interest to us.

In the first place, the purpose of increasing the amount of duty-free goods to $10, they say is because the cost of handling, and so forth, is excessive. Why don't we raise some service charge for handling these goods and balance it instead of trying to look for more business and lose more money? That is the way it occurs to me.

Then there is another thing that I do not understand. The bill say that one package per day is the limit. What is the idea there? Does Congress think that people are going to buy more than one package a day? I do, and no doubt they will. Everybody in America senses a bargain, and if we can get it for less over on the other side, we are going to buy it.

Now, let us see what the effect is. I just thought that I might tell you, and I have brought along, and I ask that it be left with the committee, a catalog of Montgomery Ward. Montgomery Ward does a business of a billion and a quarter, and not all of it is mail order. They have retail stores, too, and I could not get the exact breakdown.

Sears, Roebuck does a business of 2½ billion, and there again I cannot give you the exact breakdown, but the fact is that both businesses were started and operated as mail-order houses; they have built a tremendous institution. They publish books like this. They are sent through the mails, and contain thousands of articles, pictures and all. What is wrong with this? Why cannot anybody else send them into this country and get the business.

I brought along an English leather-goods journal, and a French leather-goods journal. You will find in both of these books that the machinery is set, pictures and all—it is just a matter of taking these bags and putting them down in American language, state the price, and set the business up.

Our Canadian neighbors, the Mexican border, everything becomes open. Now, let us see what I am arguing about.

My feelings are these: I represent salesmen, workingmen, men who already are suffering because of an excise tax. We asked Congress to put a ceiling on hotel rooms and they could not do that; we asked that the cost-of-living adjustment be given to us—no; they froze the rate of commission; we asked that a base be given us where commissions cannot be cut because of a freeze, and even that Congress cannot see their way of doing that.

Now, our men are entitled to work and earn a living, and I want to assure you, Senator, and for the record that we are suffering now more than we ever did. We work harder, we travel more and, perhaps, the testimony already before you will prove that the decrease in sales has naturally cut our income, and it is a question as to how we can best service our industry.

Most of our men work on a commission basis and, as such, no business, no commission; the expenses are there. So, let us leave that matter for a moment, because I want to stress the one point. You have got a mail-order potential here that with one package a day, several members in a family—you have opened the gates.

Now, there is another thought that I think we ought to stress at this point: It may well be that what I say will not happen, and it may well be that the power of the Secretary of the Treasury or whatever official whose province it shall be, will then say that it is a bad bargain and we have got to close the gates.

Now, certainly, that would be a bad piece of business. I would not expect them to do it because certainly that would not make for friendship in any foreign country. It is so much easier to look at this practically from a fair basis and stop it in its inception because you cannot recall it. I think that once you let this go, no matter how much damage is done you have not got a chance of changing it.

I want to also stress one other thing, that in the charity of this Government they try to conserve moneys, but they are willing to excuse excise taxes because they are bought or made on the other side of Rouse's Point. Why? Don't we need the money? I don't where that generosity comes in.

So, over all, I don't see that we are going to help the international situation too well. I do not know, but that some of these packages arriving here without being opened by customs might not contain some propaganda that we might ultimately be sorry for. I still believe that the best thing we can do is to let 321 alone, with its $1 top and not look for things that we will be sorry for later.

I thank you.

Senator JOHNSON. We thank you, Mr. Shapiro.

Mr. SHAPIRO. Thank you, sir.

Senator JOHNSON. Our next witness is Mr. Louis Rothschild of the National Association for Retail Clothiers and Furnishers.

STATEMENT OF LOUIS ROTHSCHILD, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF RETAIL CLOTHIERS AND FURNISHERS

Mr. ROTHSCHILD. My name is Louis Rothschild. I am executive director of the National Association of Retail Clothiers and Furnishers, which is a fancy name for the men's wear stores.

I have submitted a brief statement which I would appreciate if it could be included in the record.

Senator JOHNSON. Yes, it will be made part of the record just as you have proposed it.

Mr. ROTHSCHILD. A number of retail associations and retail spokesmen have appeared before this committee in opposition to the increasing of the limitation from $1 to $10, and to that statement, those statements, we say "amen" and we approve those positions.

In the men's wear field we are particularly worried about the possibility of unfair mail-order competition because of the fact that men's furnishings fall into the classification that they can be sold for $10, and imported; and, in addition to that, the word "imported," as the Senator knows as a consumer, is a magic word with men.

Consumers look, mistakenly in many instances, to receiving quality goods because it has the word "imported" or "made here" or "made there" on it.

Already there is considerable mail-order competition of a legitimate sort. Esquire magazine, this issue, has some 15 ads of a mail-order nature, advertising imported items. Only two of those, however, come from abroad, and one is advertising shoes for $9 and something from England, and the other is advertising shoes for $18 something from England.

I am sure the Senator is familiar with the story of the fears of the competition, but I thought that I would briefly visualize it for you.

If you will indulge me for a moment, here is a hat from England, a quality hat, which costs in this country, $18.50, with the regular retail mark-up. This hat could be sold by mail order, provided this measure were to pass as it is writen, for $9.50, within the limitation.

It is a fine hat, a quality product, largely advertised by American merchants who have built up a demand.

Here is a real luxury item, imported toilet water, one of those things you get for Christmas and give to a friend next Christmas. However, this sells here for $7, including, of course, the customs duty—the 20-percent Federal tax brings it to $8.40.

On a mail-order advertisement and business it could be profitably sold for under $4.

Here is a cashmere muffler, a beautiful feel to it—would the Senator like to feel it?

Senator JOHNSON. Throw it up, I will catch it.

Mr. ROTHSCHILD. It has really got luxuriousness to the feel of the thing. That muffler sells for $12.50 in retail stores here. It is imported, and that is its selling point, in addition to the feel. You will notice that "Johnson's of Elgin" and "Made in Scotland" in the label.

It could be sold, if this bill were to pass, on a mail-order campaign profitably for $7.

I have another item, the last, a Braemar sweater made in Scotland of lamb's wool, it is not cashmere. It sells in this country for $12, with customs, retail profit, not counting the local sales tax, which

varies in the jurisdictions—it could be sold under a mail-order campaign for under $7 profitably.

That is the reason the men's-wear merchants of the country are fearful that the proposed bill would open the door to a competition they could not meet, would capitalize upon their thousands of dollars they have spent advertising the word "imported" and the words "Made in Scotland" and "British wool," and so forth, and that is why we urge this committee not to enact that section of the proposed bill which would open up this competition.

Thank you very much, unless there are some questions, Senator.

Senator JOHNSON. We are pleased to have your testimony, Mr. Rothschild.

(The prepared statement of Louis Rothschild is as follows:)

STATEMENT OF LOUIS ROTHSCHILD REGARDING H. R. 5505 (CUSTOMS SIMPLIFICATION ACT OF 1951)

My name is Louis Rothschild. I am the executive director of the National Association of Retail Clothiers and Furnishers with headquarters in the Munsey Building, Washington, D. C. This association is the national group representing men's and boys' wear merchants with over 2,000 members located throughout the United States.

I am appearing in opposition to that part of section 11 of H. R. 5505 which would, according to our understanding, widely open the doors to mail-order businesses operating from abroad selling men's wear.

The retailer that we represent is almost typical small business. The average men's store has under five employees and does a volume of less than $150,000 a year. Even in that volume, the word "imported" is a magic name. Particularly, the word "British" has special significance to consumers. Our trade does a large volume of business in imported scarfs, hats, shoes, jewelry, neckwear, pipes, razors, and toiletries.

Practically all of these items could be successfully sold under a mail-order arrangement from abroad if the proposal now before this committee is enacted into law.

Please understand that we do not oppose mail-order businesses as such. They are an established method of doing business and already a substantial factor in men's wear. I would call your attention to the mail-order ads in a typical issue of Esquire magazine as indicating the receptiveness of the consumer to mail-order buying and particularly goods with the magic word "imported." The current issue of Esquire magazine has two mail-order ads from England offering British-made shoes, one of which is priced to the consumer under $10 even in the face of present tariff. But the mail-order business today does not avoid customs duty or Federal excise tax and, therefore, is competitive to those of local merchants.

If this bill were to pass, the men's wear merchant could not meet the competition on imported items. Here are some examples of what could be sold:

A man's wool sweater, on which the word "imported" is a terrific selling point, costs $12 in this country to the consumer through the reputable merchants. If this bill were to pass, it could be sold extremely profitable for $7.50 by mail order.

A fine imported man's hat in this country retailing at $18.50 could be offered by mail for $9.50 because of the saving in customs and the lower standards of merchandising in foreign countries.

A fine cashmere muffler with a fringe which is sold in retail stores in this country for $12.50 could be sold for under $7 by mail order, largely due to the savings by avoiding the 45-percent customs duty.

Men's jewelry, such as cuff links, tie clasps, etc., subject to customs ranging between 35 and 55 percent of costs, would permit merchandise being sold here for $12 to be sold very profitably by mail order from abroad at $6 and less. In addition, the Federal excise tax on jewelry would be lost. The same loss of excise taxes would apply to wallets, leather goods, face lotions, and other items. For example, a pure luxury item like after-shaving lotion, which retails here for $7 plus the 20-percent Federal tax, or $8.40, would be easily profitably sold for under $4.

We note, of course, that the proposed bill sets up what is probably intended to be a savings provision to prevent unfair competition in that the Secretary of

the Treasury would have the right to prevent abuses by mail-order businesses. It is unlikely, in our opinion, that the Secretary's office would be able to police the thousands of advertising media which would carry mail-order offerings, much less the direct-mail advertising. Corrective action would be so late that it would be, in effect, locking the stable door after the horse is stolen.

That this is more than on imaginary danger is well attested by the advertisements of cruise ships who make great capital in obtaining tourists for the West Indies, South America, Nassau, Habana, Bermuda, and other places saying that this will give you an opportunity to buy fine English woolens, French perfumes, and other items customs free and at large savings. If the savings of customs is worth advertising for a luxury liner, it certainly is a sales point for a direct-mail campaign.

Various retail groups have appeared before this committee stating a similar position and we endorse and approve the statements made by them. I wish to respectfully point out the men's wear merchant is in a particularly vulnerable spot if this legislation should pass.

We, therefore, respectfully urge that section 11 of the pending bill, which proposes to amend section 321 (b) (2) of the Tariff Act, not be enacted.

Senator JOHNSON. Mr. Cohen of the Pocketbook Workers Union. All right, Mr. Cohen.

STATEMENT OF SAMUEL HARRIS COHEN, ATTORNEY, POCKETBOOK WORKERS UNION, AFL

Mr. COHEN. I shall ask for leave to submit a written statement. I have some notes here, and shall mail a statement in in very short order.

Senator JOHNSON. Do you have a written statement?

Mr. COHEN. Not complete, sir; just in the ——

Senator JOHNSON. That is all right; you can make an oral statement, and the reporter will take it down.

Mr. COHEN. Thank you.

Senator JOHNSON. You can do that or you can submit a written statement later if you wish. It is not necessary.

Mr. COHEN. Honorable sir, my name is Samuel Harris Cohen, of 1776 Broadway, New York City.

Senator JOHNSON. Your name is Samuel Harris Cohen? What is your address again?

Mr. COHEN. It is 1776 Broadway, New York City 19, N. Y.

I appear as the attorney for the Pocketbook Workers Union affiliated with the American Federation of Labor. It is a local union of an international, which international will soon be heard from through another speaker.

This union has about 12,000 members who work in the greater metropolitan area of New York, which would include parts of Connecticut, New Jersey, and New York, and some parts of Massachusetts, although strictly speaking that is not metropolitan New York as we understand it.

These members work in the ladies' hand-made bag industry, as distinguished from the machine aspects of the industry that you have already been told about.

They work for some 335 employers who manufacture handbags and for some 150 employers who manufacture personal leather goods, key bags, and items of that sort.

Fifty-five percent of the handbag production of the United States is produced by members of this union. The 55-percent figure in connection with the discussion before this committee is misleading in that almost 90 percent of the quality hand-made handbags as dis-

tinguished from machine-made are made in this metropolitan New York area.

For the most part, the out-of-town companies are engaged in a field where they produce by machines, and which products are retailed from $1 to $5 per unit.

Quality bags, however, sell from $7.50 and up, and they go quite high, but they average out from about $10.50 to $12.50 a bag retail—that being the price that it reaches the American consumer.

This union for which I am speaking is at this moment experiencing one of its worst depressions since our great depression of 1933, and I am not saying that we have not had good times since then; I am saying we never had business as bad as it is at this present moment since that time.

Senator JOHNSON. What is the cause of that?

Mr. COHEN. Many factors.

Senator JOHNSON. Because this bill is not in effect yet.

Mr. COHEN. No. There are many factors, Senator, and from the kind of work we do, we will give you some indication of how bad it is. Other speakers have covered why business is bad, and we will address ourselves to the possible depressing effects of this bill to union's segment of the industry, namely, the quality hand-made bag as distinguished from the machine-made bag; that essentially is the product that will be involved if this bill goes through with the $10 duty-free exemption.

Recently this union, and I know this because of the nature of the work that we are doing in our firm, has been experiencing difficulty in collecting holiday and vacation pay; incidentally, at best there is a part-time employment industry involved here, because we find vacation pay is based not on service to the individual employer but in the industry, otherwise these workers would never be entitled to a vacation. They just do not put in the norm of, let us say, 48 weeks per annum for one single employer, so you find concrete proof of the part-time employment in this industry even under normal times by the method used for the payment and the computation of vacation pay.

Recently, and for the first time in many years, this union has been asked by many employers for an extension of time in which to pay vacation and holiday pay and wages, something we have not experienced, sir, as I said, since 1933.

The New York market primarily produces the quality hand-made bag. It is this part of the industry that will be most directly affected by the unfair imports of handbags.

The proposed change in section 321 of H. R. 5505 will contribute greatly to the unfairness of the foreign competition to the quality handbag employer and worker.

The person of means is the purchaser of quality handbags, and also the foreign traveler. The proposed amendment will encourage this group of citizens to purchase their handbags abroad or from foreign mail-order companies.

Without the benefit of this proposed duty tax gift the foreign producer has many advantages. I will not spell them out in detail, but generally speaking, the wages run from 30 percent to 40 percent of the American wage, and we are what is known as a low-wage industry.

In addition, we work in this industry 37½ hours, something that took 50 years to obtain, and industry is satisfied with that workweek.

It is one way, incidentally, of spreading employment throughout the year; that is one of the basic reasons for it.

In Europe we find them working from 48 hours to 54 hours, that is, in those companies for which there are published figures. What happens to hours in the home-work aspects of production in Europe we can only guess at.

In America, as you know, we have, by and large, abolished the home-work production of handbags and similar products.

We have innumerable fringe benefits, holidays, vacations, welfare, hospital benefits, and things of that sort, which are today the norm for the American worker. These things not only are not in existence in foreign companies and foreign workers do not have them, but they have never even heard of them.

In addition to all these disadvantages to our workers here, we are now faced with this potential gift with respect to duty tax. We say that this must not be imposed upon this segment of American industry for these reasons.

Also we find that there is an American way of doing business which includes a retail mark-up of about 40 percent. That is the standard retail mark-up for handbags and similar products. I do not want to burden the record with why that is, but that is the reality, and everyone accepts it in this country.

When we speak of the potential competition under this bill we are speaking of mail-order business and foreign purchases by American citizens in this very field of quality handbags.

American employers are faced, as I say, when bags are sold in this country, with this normal retail mark-up. If they come into this country, as they most likely will, through a mail-order business, we will then find, as we do in this country, that the mark-up is nearer 20 percent, and most likely in the instance of foreign mail-order companies, less. That is much more of an evil than appears on its face, because while in America Sears, Roebuck and the other mail-order companies sell handbags, they are, for the most part, the machine-made products, and they sell, generally speaking, in the $1 to $5 bracket.

This foreign mail-order business, with all the advantages that they now have, will compete directly for what we call the quality hand-made product, and the quality consumer, namely, the average $10 purchaser.

We say that we have enough difficulties in this aspect of American industry at this moment, and the reality is that we are suffering from a depression. The imposition of this extra burden, which we think is a very real threat will be depressing to the ladies' bag industry. Already imports, with present requirements of the payment of duties, in the mere instance of Cuba, where the variation of 17 percent exists as distinguished from 20 percent provides serious competition—I personally in connection with a business trip to Cuba recently saw many new employers in the hand-made-bag field.

In addition, we have a special plea, we think a favorite plea, of many members of this committee and of Congress, and that is the plea for the small-business man.

With all due respect to Congress, what has been said and done about the plight of the small-business man, in the view of many of us, has been lip service rather than concrete laws and the enforcement of the laws that we have on the books today. I respectfully refer you to the

findings of the House Select Committee on Small Business, Eighty-first Congress, House Document No. 599 and the Senate's counterpart Small Business Committee to elaborate and support that contention, not to mention the difficulties we have in the enforcement of our Sherman antitrust law and the State antitrust laws.

When we speak of the union and employers, we are speaking for small-business people only in this quality hand-made field.

In New York—this may surprise you—there are five employers who employ a hundred employees or more—five of them; there are about 125 who employ 20 employees or less, and when we say "less" we mean 2 and 3. Those are the business people who are speaking to you here through their representatives, and I am addressing myself on behalf of their workers.

Truly, we have a situation here where we should not aggravate the plight of the small-business man which is, insofar as this industry is concerned, a very serious plight as of this moment.

We say to you that the women and men who buy handbags for wives and friends, are at this moment boycotting the $10 American made product particularly because of the excise tax. We cannot and we do not desire to go into the inequities of that tax. That has been before this committee on another occasion, and the probabilities are that it will come up again in the very near future, we hope.

In the refusal of the American purchaser to pay a $2 tax on a $10 handbag purchase, a $4 tax on a $20 handbag purchase, we have a reality that the foreign producer, who is now being invited to come into this market, will unevenly compete with us in addition to the reasons that I have mentioned, because they will not have the 20-percent excise tax.

Also, as you know, in New York City they now have blessed us with a 3-percent sales tax, and I have reason to believe that sales tax plagues the American consumer and retail businesses in many other States in the United States. That, too, will be an advantage that the foreign producer will have over our people here in this country.

Now, while this bill provides for exceptions in the discretion of an administrator—it says that the Secretary of the Treasury may change the figures—realistically we know they will not be modified. Our experience has been that these exceptions once the amount is frozen in the bill to $10 for personal use and $5 for resale, very rarely, if ever are changed by the administrator.

We think—and this is in a sense an aside—it is a bad way of legislating for Congress to say to administrators, "You determine whether it is $10 or a lesser amount." That is a legal problem in a sense, a legislative problem, but realistically the people in this industry feel that they will not have any changes made, so that the attempt of the writers of this legislation to say, "Well, we will work out an experience and give you exemptions," we think is just coloration; it will not come to pass.

For all these reasons we say to you on behalf of low-paid, low-income quality bag workers, working in New York City and totaling about 12,000 people, do not add to the burdens of these people.

Please accept our sincere thanks for this opportunity to speak in behalf of these workers.

Senator JOHNSON. We thank you, sir.

Mr. COHEN. Thank you.

Senator JOHNSON. Mr. Walinsky, International Handbag, Luggage, Belt, and Novelty Workers' Union.

STATEMENT OF OSSIP WALINSKY, PRESIDENT, INTERNATIONAL HANDBAG, LUGGAGE, BELT, AND NOVELTY WORKERS' UNION

Mr. WALINSKY. Mr. Chairman, my name is Ossip Walinsky. I am president of the International, Handbag, Luggage, Belt and Novelty Workers' Union, a union comprising many trades, essential trades, providing 70,000,000 women of all ages with ladies' handbags and personal leather goods, and tens of millions of travelers with all types of luggage and travel goods. There are more than 1,650 manufacturers in our trades, but close to 90 percent of our employers are small-business men employing, on an average, less than 23 workers.

Yes, in the midst of greatest prosperity, the highest rate of production, the highest rate of income, the highest rate of profits, our members are underemployed and unemployed. The recession in our trades began in 1947 and has continued each year. To cite but one example, the volume of business in the handbag industry, comprising the largest group of all of the five trades we represent, namely, women's handbags and purses, luggage, personal leather goods, belts, and leather-goods novelties—this segment of the pocketbook industry employing over 40 percent of the total number of our workers, has dwindled from $200,000,000 at wholesale in 1946 to $135,000,000 in 1951.

The financial position of our manufacturers is precarious. If there were only a congressional committee or a Senate committee hearing today or any other day to investigate the struggle of our manufacturers to maintain themselves in business and the plight and fight of our workers for their very existence.

Speaking of recession and depression in our industry, we cannot help but emphasize the fact that it is the unjustified and discriminatory so-called excise tax in the amount of 20 percent on one hand, and the lowering of the tariff rates from 35 percent to 17½ percent on handbags made of reptile and to 20 percent on handbags made of other leathers—yes, these importations from foreign countries—the manufacturers of which pay their labor but a third, and in the best cases only 40 percent, of the wage rates prevailing in our shops—are the greatest contributing factors to the grave crisis in our industry, because the consuming public of America is in open rebellion against the excise tax.

You may think that the wages of the workers of our trades are rather high. We hear of late about the hourly wage rate of miners to the extent of $2.44, and the hourly wage rates of automobile workers of $2.88, of the steel workers getting $1.88 per hour. You will, therefore, permit me to quote from a survey of the Bureau of Labor Statistics, United States Department of Labor, dated April 1950—the result of which was as follows:

In March–April 1950, the average plant worker in selected leather goods plants had straight-time earnings of 95 cents per hour. Among the five branches of the leather-goods industry studied, over one-third of the workers had hourly earnings of less than 85 cents and more than one-half were earning less than $1 an hour.

Taking into consideration the value of the dollar today as against the value of the dollar in 1940, the workers of our industry, Mr.

Chairman, and I say this respectfully for your kind consideration and attention, are making approximately 42½ cents to 50 cents an hour.

You asked a question before, Mr. Chairman, of why there was a depression in our industry, in the soft-goods industry? My answer is that the wage earners of the country, which are the bulk of our consumers have no dollars to spend on handbags or, for that matter, on any other things.

As you well know, the worker has to live all year round, pay rent all year round, eat every day, not to speak of doctors' bills, dentists' bills, the bills for a little life insurance, et cetera—but, there is no steady employment. There is great unemployment in our trades—there is great unemployment instead.

Yes, when is a congressional committee or a Senate committee going to investigate the plight of our manufacturers, the plight of our workers, the plight of our trades instead of devoting a whole lot of time to customs simplification bill H. R. 5505? They call it customs simplification bill. My workers—and I represent more than 35,000 in various respective trades—call it the customs assassination bill. Coming now on top of an excise-killing bill and a cutthroat import duty reduction bill, that is the way we feel about it.

Mr. Chairman, and I am here to tell you, we are told that the State Department, the Mutual Security Agency are in favor of the so-called customs simplification bill, H. R. 5505, and are urging favorable action on the bill because cuts in United States Custom red tape would encourage European exports to this country, and that the bill, if passed, would remove the complexities and uncertainties of custom procedures which have been a major deterrent to European exporters new to the American market. Yes, the State Department, the Mutual Security Agency, and all other Government agencies are very much concerned about European exporters—American importers—they are even concerned about the living standards and conditions of the people of India, North Africa, South Africa, Asia, South America and the people all over the world. We should be concerned with the lot of the people all over the world—and, by the way, I am one of those who believes, together with that great American, now deceased, Wendell Willkie—yes, I believe in one world. But, gentlemen, of the jury—and you are the gentlemen of the jury, the members of the Finance Committee, I am here to tell you that the handbag, luggage, and personal leather goods industry needs a point 4 program of our own.

We are passing through the gravest crisis in our industry. Our markets are contracting, the volume of business is growing less, the competition is more keen, the vast majority of our manufacturers claim that they are hardly breaking even, not to speak of making profits, the pay envelopes of our workers are shrinking, and for many a month during the year they see no pay envelope at all. Are these factors none of your concern? Are these ailments of no concern to our Government in general and its various agencies in particular? Is there no one to care for the little fellow? Is this so-called customs simplification bill, H. R. 5505, going to pass because we are too poor to have a lobby of our own, too small in numbers to influence decisions of our legislators, too insignificant, too unimportant as trades and industry, though we are essential trades and industry—yes; is it

because we are poor and uninfluential that our rights are going to be trampled upon?

Why the administrative exemptions on alcoholic beverages, snuff, tobacco, cigars, and cigarettes? Because said products are billion-dollar monopolies with powerful lobbies behind them?

We are told that Treasury sources explain that under present law, exempting only imports of $1 or less, customs manpower was "dissipated" in collecting duty on trivial amounts and that the raising of the exemption to $10 would not substantially weaken protection for domestic producers. What do the gentlemen of the Treasury Department mean by "not substantially weaken protection for domestic producers"? Do they know that we live in a state of depression, that we need every dollar's worth of goods to be manufactured in our shops? Do they know that some of our workers are crying for a day's work because their unemployment benefits have been exhausted for the year and it is either a day's work or a relief dole or city relief? Do the gentlemen of the State Department, dealing in terms of billions of dollars, know what only a million dollars' worth of business means to as many as 100 small manufacturers?

We are told that under the pending bill the Secretary of the Treasury would hold discretionary powers to prevent abuses and that specifically it meant that the Secretary of the Treasury would be empowered to prevent, for example, a mail-order business from engaging in the direct shipment of dutiable articles to purchasers in the United States.

I am here not only to protest against this so-called customs simplification bill, H. R. 5505, but I am here on record against any discretionary powers vested in the Secretary of the Treasury or any other head of a Government agency. Our experience is the experience of the poor man, the little man, the common man; the sad experience of a man against whom the door is shut, against whom legislators legislate without fear of retaliation politically.

To us the customs simplification bill H. R. 5505 is very plain and simple. It will permit at all times Americans as individuals to purchase by mail order foreign goods up to $10 free from duty and free from excise taxes. That is what it means. That is enough to have all workers in our industry up in arms against the bill. I need not emphasize that in our opinion:

1. The customs simplification bill, H. R. 5505, would mean a direct loss of revenue to the Government.

2. That the bill would mean an appreciable reduction in the collection of Federal, retailer, and manufacturer excise taxes in the United States since the imported items would not be subject to excises.

3. That the duty-free, excise-free shipments from foreign mail-order companies would cause a loss of business to American firms with a resultant loss to the Treasury in income taxes.

Yes, while the Government can stand the loss of revenue and retailers can stand the loss of business and internal revenue officers can stand the loss of income tax collections, I am here to raise my voice in protest against the customs simplification bill, H. R. 5505, because the workers of our trades cannot afford to lose one nickel in wages, nor can our manufacturers afford to lose $1 in business.

In conclusion, Mr. Chairman, dealing with the customs simplification, as you will, we trust, because our trades are in that state of de-

pression, and because we represent loyal Americans devoted to our country, struggling for our livelihood, we believe that you will not recommend approval of this bill, because that will mean adding not only insult to injury, but greater injury to already a very badly injured industry.

I thank you.

Senator JOHNSON. What does that word "International" mean in your title?

Mr. WALINSKY. It means we have local unions not only in the United States but in Canada, and because of that that is the meaning of "International."

Senator JOHNSON. We can understand how you got to be president of your union.

Mr. WALINSKY. Thank you ever so much.

Senator JOHNSON. Miss Bennett. Miss Julia Bennett, American Library Association.

STATEMENT OF JULIA D. BENNETT, DIRECTOR, WASHINGTON OFFICE, AMERICAN LIBRARY ASSOCIATION

Miss BENNETT. Mr. Chairman, my name is Julia D. Bennett, and I am director of the Washington office of the American Library Association, which is in the Hotel Congressional.

The American Library Association is a professional organization of 20,000 librarians, trustees, and friends of libraries interested in the development, extension, and strengthening of our Nation's library services. Today I shall speak primarily for the college, university, and large public libraries interested in securing foreign books for scholarship and research purposes. We appreciate the opportunity to comment on H. R. 5505.

Since the conclusion of the war, American libraries have been sadly hampered by antiquated customs regulations affecting the importation of books for college, university, and public research libraries. Currently we operate under section 498 of the Tariff Act of 1930, 19 United States Code, section 1498, which authorized the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of merchandise not exceeding $100 in value. Under this provision of the law, the informal entry has been authorized for libraries on importations not exceeding $100 in value.

Two factors have made the $100 limitation unrealistic. First of all book costs have risen steadily since the war, and a $100 shipment now covers a very few books. Moreover, since the war American research libraries have taken more energetic steps to secure European research books. This is because of the fact that during the war American research was crippled by the lack at that time of adequate European books in this country. Several governmental research groups strongly complained about this, and as a result the Library of Congress and the other great Federal libraries, working with the Association of Research Libraries, which is an affiliated national association of the American Library Association, have taken a number of steps to be sure that at least one copy of every important European research book is available in this country.

Secondly, libraries find the "customs declarations" time consuming, often resulting in crippling delays in the receipt of books urgently

needed for research or teaching, and particularly complicated since not continuously used. Currently all books and printed materials imported by libraries are duty free, so that the barrier for libraries has been complicated consular invoices necessary on purchases over $100. In addition, "custom declarations" necessitates the services of a broker and additional clerical help which adds considerably to the cost of the books. It is not necessary, I am sure, to remind the committee that currently all libraries are suffering budgetwise from the inflated dollar.

We are pleased to note in section 15 (b) of H. R. 5505 as reported by the House Ways and Means Committee and passed by the House that section 498 of the Tariff Act of 1930 was amended so as to permit informal entry of merchandise covered by paragraph 1631 without regard to the ceiling in shipments of any value. Educational institutions and public libraries are listed under paragraph 1631.

We urge the passage of H. R. 5505 with particular reference to section 15 as it passed the House whereby libraries may bring into this country, such merchandise as books, maps, and so forth—not intended for resale—under informal entry without regard to a ceiling of any value on shipments.

We know that your committee will consider our problem. We appreciate this opportunity to testify.

Senator JOHNSON. We thank you, Miss Bennett.

Miss BENNETT. Thank you.

Senator JOHNSON. Mr. John Breckinridge.

STATEMENT OF JOHN BRECKINRIDGE, THE DEHYDRATED ONION AND GARLIC INDUSTRY OF AMERICA

Mr. BRECKINRIDGE. Mr. Chairman, my name is John Breckinridge, of the law firm of Pope, Ballard, and Loos, of Washington, D. C. I appear here today on behalf of the Dehydrated Onion and Garlic Industry, which is composed of—at least that portion which I represent—Basic Vegetable Products, Inc., Vaccaville, Calif.; Gentry, Inc., of Los Angeles, Calif.; Puccinelli Packing Co., Turlock, Calif.; and J. R. Simplot Dehydrating Co., Caldwell, Idaho.

In order to avoid repeating the facts of the industry that have been stated to this committee and other committees before, I would like to refer to my statement on behalf of the dehydrated onion and garlic industry at pages 551 and 576 of the House Ways and Means Committee hearings on the customs simplification bill now before this committee, which was at that time H. R. 1535; also to my testimony on behalf of the same industry before this committee last year in connection with the Trade Agreements Extension Act of 1951, which was H. R. 1612 at page 930.

Very briefly, these four companies produce over 90 percent or approximately 90 percent of all the dehydrated onions and dehydrated garlic produced in the United States.

They are vitally interested in sections 2, 13, and 20 of H. R. 5505 now before the committee.

We are opposed to those three sections because we do not believe they are germane to any bill designed to simplify customs administration and procedure. We think they are substantive policy changes.

We were very pleased to note in the letter from the committee advising us that we would be permitted to appear, that the committee had already decided to limit the consideration of the hearings to amendments and sections in the bill which were strictly simplifications of customs procedure.

Now, I would just like to make a very brief comment about each of the sections named. Section 2 of the bill involves amendments to the antidumping act of 1921 and the countervailing duty statute, which is section 303 of the Tariff Act of 1930.

The changes involved there could not in any manner of means be called a customs procedure simplification. The change in the dumping statute is not terribly important, but I think we must keep in mind that the administration proposal originally was to change the requirement of injury in the dumping statute to the requirement of material injury, the effect of which, in my opinion, would have been the same as repealing the statute entirely, it would have been a congressional ratification or approval of the manner in which the Treasury Department has almost completely ignored the provisions of the antidumping statute.

In that connection I would like to refer the committee to a case which is pending before the Treasury Department under the antidumping statute against dumped imports of almonds from Spain and dumped imports of almonds from Italy.

I would like to submit to the committee for its consideration a copy of a brief we filed in the almond case on April 3, 1952, and for the record I would like to submit a memorandum which our office has prepared for the committee entitled "Legal Duties and Functions Under the Antidumping Act, 1921." I am convinced that when the committee reads the memorandum concerning the duties of the Treasury Department and the manner in which they have ignored them, it will agree with me that this is probably one of the most flagrant violations of law by an executive agency that could be cited.

Senator JOHNSON. Mr. Breckinridge, did you want that made a part of the hearing? Do you want that inserted in the hearing?

Mr. BRECKINRIDGE. Yes, sir.

Senator JOHNSON. It is a rather long document. I presume it cannot be——

Mr. BRECKINRIDGE. That cannot be cut down. The brief itself, sir, I am just submitting for the committee's consideration.

Senator JOHNSON. That will be in our files.

Mr. BRECKINRIDGE. Yes, sir.

(The brief referred to is on file with the committee.)

Mr. BRECKINRIDGE. I am informed that a member of the committee some time back attended a conference with the Treasury Department officials at which this almond dumping case was discussed, and at that time the Treasury—the Assistant Secretary of the Treasury, Mr. Graham—promised that a full record of the manner in which they conducted their investigation, and a full record of the evidence which they considered in reaching their conclusion would be submitted to the committee for review. For that reason I think this brief and this memorandum which I have submitted for the record has great significance to the matter being considered by the committee.

As a supplement to the complaint against dumping which was submitted to the Treasury Department, and there ignored, and as a com-

plaint against unfair trade practices and unfair methods of competition employed by Italy and Spain in exporting almonds to the United States, we filed a complaint under oath with the Tariff Commission under section 337 of the Tariff Act of 1930, which provides for an exclusion of imports if unfair trade practices or methods of competition are being employed by foreign producers or exporters or by foreign governments.

Incidentally, I would like to submit a copy of that complaint for the record, which is only five pages long.

Senator JOHNSON. All right. It may be inserted.

Mr. BRECKINRIDGE. That complaint was dismissed summarily by the Tariff Commission with the mere suggestion that there was an alternative remedy under the dumping statute which, according to the words of this committee in 1922 as to the intent behind the section 337, was certainly not consistent with the intent of Congress. It was dismissed without a hearing, which appears to be mandatory under the statute. It was dismissed summarily without even giving the almond industry its day in court.

As a result, we filed an application for a petition for reconsideration on April 23, in which we review the legislative history of section 337 before this committee, and the court cases decided under the statute. These show very clearly that section 337 was designed as a supplement to and a more complete remedy for American producers against unfair trade practices even though they might at the same time constitute dumping, and I would like to submit that petition for reconsideration for the record, which is only 4 pages long. It will be interesting to see what action the Tariff Commission takes on this petition.

Senator JOHNSON. It will be made a part of the record.

Mr. BRECKINRIDGE. I submit those to the committee in order to show how the administration has ignored the statutes which were very clearly designed for the protection of American industries, and to show how badly we need a strengthening of the antidumping statute rather than any weakening or affirmation of the existing executive policy of ignoring the obvious intent of Congress.

We have certain recommendations that we would like to make in connection with the antidumping statute, such as that the injury requirement should be eliminated, and that it should be administered by the Tariff Commission rather than the Treasury Department, where all other investigations of that type are conducted, the antidumping statute and the countervailing duty statute being the only exceptions.

However, we recognize that such recommendations should not be included in this bill if it is to be a customs simplification bill. Appropriate recommendations for amendments will be made at the appropriate time.

We think that section 2 should be merely eliminated from the bill.

Now, section 2 deals also with the countervailing duty statute, which is section 303 of the Tariff Act of 1930. It proposes—the principal proposal there is to add to section 303 the requirement of injury similar to the requirement now in the antidumping statute. We submit that if the committee and the Congress did that, it would constitute a license for the administration to ignore the countervailing duty statute, as they have ignored the antidumping statute. We do not

think that would be consistent with the policy of this committee which the Congress adopted last year in the Trade Agreements Extension Act, which primarily provided new avenues of relief to American producers and recognized the growing tendency of imports and unfair trade practices to injure American producers.

Section 13 of the bill involving the valuation of imports for customs purposes is a very complicated section, but principally it changes the basis of valuation on which our ad valorem duties are based from the existing practice for foreign value or export value, whichever is higher, to export value, as the principal method of valuation and eliminating foreign value entirely as a consideration in levying and collecting import duties.

The general effect of that will be to lower the protective incidence of most, if not all, ad valorem duties. I think the Bureau of Customs itself will admit that historically the foreign value has been higher than the export value. In the case of dehydrated onions and dehydrated garlic the duty is on an ad valorem basis, and section 13, if adopted, would reduce the protective incidence of those duties.

There is another important factor involved in section 13. If we adopt the export value as the principal value for customs purposes, the courts could construe that, and I fear might construe it as nullifying the antidumping statute.

To illustrate that, I can give an example. In the case of almonds at the present time, the foreign value, based on the official rate of exchange, is about 92 cents per pound. The export value, based on a specific multiple rate of exchange for exporting almonds, is about 37 cents per pound, and that is the basis of our dumping complaint. But if the Congress enacted this provision, section 13, making export value the principal basis of valuation, it could be claimed that since the 37 cents is the legal export value under section 13 and, therefore, could not be complained of or that it could not constitute dumping under the antidumping statute.

Now, that is a very serious danger which I think the committee should consider carefully.

On section 20, which involves the conversion of foreign currency for customs purposes, against this is a very complicated section, and I do not profess to be an expert on all the ramifications of foreign currencies and these frequent manipulations for various reasons, but the danger involved is, in my opinion, that the section as now written recognizes and authorizes foreign countries to use various multiple rates of exchange for various commodities and to manipulate those various rates as they see fit, depending on whether they want to encourage or discourage either exports or imports of that commodity, which can be one of the most vicious forms of foreign trade control known. It would be inconsistent with the entire foreign trade policy of this Congress.

Again, we think that that section 20 should come out of the bill entirely because we believe it is a substantive policy change rather than a change in customs procedures.

If there is to be any change in the law at this time I think the committee should atttempt to define a single rate of exchange which would be applicable in all customs transactions, and that such rate of ex-

change should be that most nearly representative of the commercial value of the foreign currency involved in general commercial transactions.

The dehydrated onion and garlic industry is particularly concerned about this antidumping question and countervailing duty question, and the relationship of sections 13 and 20 thereto, because of the serious threat of subsidization and dumping of these products by Egypt. Representatives of Egypt, of the Egyptian industry, and of the Egyptian Government, have been in the United States to learn our methods of producing dehydrated garlic, the standards desired by our consuming trades, and they have gone so far as to state that they intend to take over a substantial portion of the American market even if they have to have subsidies from their Government to do so.

They have also hired one of the plant managers from one of our largest dehydrating plants in the United States, who is over in Egypt now teaching them how to make dehydrated onions and garlic that will come up to the high standards demanded in this market. Here we have a very real threat of dumping and/or subsidizing exports, and we feel that that is exactly the type of thing that these laws were designed to prevent or to offset. We know that any weakening of those laws, or any affirmation or approval of the administration policy of ignoring them, would certainly work to the disadvantage of this industry, and many others in a similar position, of which there are many.

One suggestion that we would like to make, short of a change in the law, which we do not think is proper in this bill, is that the committee might in its report on this bill, express the desire or instruction that the Treasury Department and the Tariff Commission more vigorously administer these statutes for the protection of American industries and that they give the benefit of any doubts to the American industry which is essential if the policy of the statutes is to effectuated.

That is all of my statement, sir.

(The documents previously referred to are as follows:)

Before the United States Tariff Commission

A COMPLAINT UNDER OATH ALLEGING UNFAIR METHODS OF COMPETITION AND UNFAIR ACTS IN THE IMPORTATION OF ALMONDS INTO THE UNITED STATES PARTICULARLY AGAINST ITALIAN AND SPANISH IMPORTS

Application for Immediate Investigation and Exclusion from Entry Into the United States of Imported Almonds

UNDER THE PROVISIONS OF SECTION 337 OF THE TARIFF ACT OF 1930

The Complaint of the above-named complainant, California Growers Exchange, respectfully shows:

I. Complainant, California Almond Growers Exchange, is a cooperative organization of over 5,000 American almond growers who produce, process, and market approximately 70 percent of all almonds grown in the United States. Complainant's principal place of business is located at Sacramento, California.

II. The undersigned, on behalf of D. R. Bailey, General Manager of the California Almond Growers Exchange, does hereby allege under oath:

(A) Spanish, Italian, and other foreign exporters and importers of almonds into the United States have engaged in and are currently attempting to engage in—

1. Unfair methods of competition; and

2. Unfair acts—in the importation of almonds into the United States; and

(B) That such unfair methods of competition and such unfair practices in import trade tend to substantially injure the American almond growers and the American almond industry, which is and has been efficiently and economically operated in the United States.

III. Briefly, the facts on which the allegations of this complaint are based are:

1. That Italy and Spain have in the recent past sold and currently threaten to sell almonds in the United States at less than their fair value and/or cost of production and make up the difference through various improper exchange transactions, through three-cornered or multiple-cornered barter transactions and through various other methods of selling almonds in the United States at less than their fair value and/or cost of production, under circumstances which constitute unfair methods of competition and unfair practices in import trade which are declared unlawful by Section 337 (a) of the Tariff Act of 1930, 19 U. S. C. 1337 (a).

2. Section 337 (c) of the Tariff Act of 1930, 19 U. S. C. 1337 (c), provides that—

"The Tariff Commission *shall* make such investigation * * *" as herein requested.

3. Concerning the effect or tendency of these unfair trade practices and unfair methods of competition in the importation of almonds into the United States to substantially injure the American almond industry, it is sufficient to state that because of the numerous recent investigations of the American almond industry and almond import trade conducted by the Tariff Commission indicating such to be the case, it is unnecessary to give a detailed statement of the almond industry facts in this complaint. However, stated briefly such unfair trade practices and unfair methods of competition tend—

(a) To injure and nullify the attainment of the objectives of the Federal Marketing Agreement and Order Program supervised and operated by the United States Secretary of Agriculture, under which he has declared 25% of the American almond production to be surplus and required that such surplus almonds be disposed of in non-competitive channels.

(b) To injure and nullify the recent action of this Tariff Commission and the President in imposing a tariff-quota on the importation of almonds, which tariff quota was designed to prevent injury to the Federal almond support programs conducted by the Department of Agriculture and to prevent injury to the American almond growers. The Tariff Commission has already officially found that even fair imports tend to nullify the U. S. Department of Agriculture programs and to injure the American almond growers.

(c) To nullify the recent Section 32 division program of the U. S. Department of Agriculture whereby the Department of Agriculture is spending over two million dollars of the American taxpayers money to subsidize the diversion of surplus almonds to the production of oil and for feeding to cattle.

Recently, and at the very time this complaint is being filed with this Commission, an official delegation from Spain, under the auspices of the Spanish Government itself, is present in this country seeking ways and means to dump upon the American market 2,000,000 pounds of Spanish almonds at prices far below fair value. The very threat of this supply of Spanish almonds, offered below fair value, overhanging the United States market—to say nothing of the additional quantities of both Spanish and Italian almonds available for export to this country—has been and is seriously disrupting the American almond market and substantially injuring the American almond industry.

Under all these circumstances it is patently obvious that even the slightest unfair trade practice or unfair method of competition (and far more is here involved) utilized in the importation of almonds into the United States will cause serious injury to the American almond industry, an efficiently and economically operated industry, and compound the injury already being caused to American almond growers, to the government support programs and to the American taxpayers generally.

A detailed presentation of the facts and evidence in support of these allegations is contained in the attached brief presented today to the Secretary of the Treasury. This brief addressed to the Secretary of the Treasury, hereby made a part of this complaint and application, is attached as Appendix A.

IV. Pending the investigation and hearing by the Tariff Commission herein and a final determination of the facts in this case, it is requested that the Tariff Commission recommend to the President that he request the Secretary of the Treasury to forbid entry of Spanish, Italian and other foreign almonds into the United States until this investigation is completed, pursuant to the provisions of Section 337 (f) of the Tariff Act of 1930 which reads as follows:

> "Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section but has not information sufficient to satisfy him thereof, *the Secretary of Treasury shall*, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury."

Attached as Exhibit No. 1 is copy of a letter to the President, dated April 3, 1952, requesting such temporary exclusion of almonds, except under bond, pending completion of this investigation.

The almond industry of the United States is faced with an extreme emergency and this complaint has of necessity been prepared under severe limitations of time. However, it is earnestly requested that the Tariff Commission order an investigation and call a public hearing immediately on the matters above set forth. Representatives of this complainant, of other United States growers and packers of almonds will be prepared to present a full documentation by all evidence available to them. It is also requested that the Tariff Commission, through sources available to it, investigate and evaluate other evidence pertaining hereto in foreign countries which is not readily available to the American almond growers.

Wherefore, Complainant, California Almond Growers Exchange, prays that this Commission forthwith make an investigation of the matters alleged herein, pursuant to Section 337 of the Tariff Act of 1930, hold public hearings thereon, issue its findings on all the evidence presented, and transmit the final findings of this Commission to the President of the United States, and prays for such other and additional relief as to the Commission shall deem proper in the premises.

Respectfully submitted in behalf of D. R. Bailey, General Manager, California Almond Growers Exchange:

By JOHN BRECKINRIDGE,
Attorney,
Munsey Building, Washington, D. C.

KARL D. LOOS,
LEWE B. MARTIN,
JOHN F. DONELAN,
Munsey Building, Washington, D. C.
Of Counsel.

APRIL 3, 1952.

DISTRICT OF COLUMBIA, *ss:*

John Breckinridge, being first duly sworn, says that he has read and executed the foregoing complaint and application, that he knows the contents thereof and that said matters set forth therein are true and correct, to the best of his knowledge and belief.

JOHN BRECKINRIDGE.

Subscribed and sworn to before me by the said John Breckinridge this 3d day of April 1952.

——— ———, *Notary Public.*

Copies of the foregoing complaint and application have been mailed by me postage prepaid this 3d day of April 1952 to the Spanish Ambassador, Spanish Embassy, and the Italian Ambassador, Italian Embassy, both in Washington, D. C.

JOHN BRECKINRIDGE.

Before the United States Tariff Commission

PETITION FOR RECONSIDERATION

A COMPLAINT UNDER OATH ALLEGING UNFAIR METHODS OF COMPETITION AND UNFAIR ACTS IN THE IMPORTATION OF ALMONDS INTO THE UNITED STATES PARTICULARLY AGAINST ITALIAN AND SPANISH IMPORTS

Reapplication for Immediate Investigation and Exclusion From Entry Into the United States of Imported Almonds

UNDER THE PROVISIONS OF SECTION 337 OF THE TARIFF ACT OF 1930

The California Almond Growers Exchange, petitioner, on Aprid 3rd filed a complaint alleging unfair methods of competition and unfair acts in the importation of almonds into the United States, particularly against Italian and Spanish imports. The complaint alleged acts within the purview of Section 337 of the Tariff Act of 1930. By letter dated April 10, 1952, petitioner was notified that the complaint had been dismissed without investigation or hearing on the grounds that, apparently, the unfair acts alleged were covered by the Anti-Dumping Act of 1921.

Petitioner hereby requests that the Tariff Commission reconsider its decision to dismiss the complaint and grant petitioner a hearing for the purpose of proving its allegations.

Petitioner is informed and believes that the unfair acts alleged in its complaint are covered by Section 337 of the Tariff Act. In support of its conclusion petitioner has attached hereto a memorandum of points and authorities.

In the event the Commission adheres to its position, petitioner requests that the Commission set forth more fully and completely the reasons on which the Commission reached its conclusions. Specifically petitioner asks that the following questions be considered:

1. Whether the complaint failed to state facts sufficient to support its claim for relief?
2. Whether the complaint was considered frivolous in that there is no basis for bringing the complaint?
3. Whether complaint was dismissed solely because the facts indicate petitioner has a remedy under the Anti-Dumping Act of 1921?
4. Whether the complaint should be dismissed even though another less-adequate remedy has actually been invoked and relief granted is found to be inadequate?

Petitioner urges that these questions be considered fully and discussed in the Commission's dismissal of this action without hearing or investigation.

Respectfully submitted.

JOHN BRECKINRIDGE,
Attorney for California Almond Growers Association.

POPE, BALLARD & LOOS,
KARL D. LOOS,
JOHN BRECKINRIDGE,
JOHN F. DONELAN,
DICKSON R. LOOS,
Attorneys.

WASHINGTON, D. C., *April 23, 1952.*

MEMORANDUM IN SUPPORT OF PETITION FOR RECONSIDERATION

I. LEGISLATIVE HISTORY

Section 337 of the Tariff Act of 1930 was taken from section 316 of the Act of 1922. Senate Report No. 37, 71st. Cong., First Sess. (1929) states that the only changes were to clarify the review provisions by the Court of Customs and Patent Appeals.

Going back to the Tariff Act of 1922, the Congressional intention in enacting Section 337 is clear beyond doubt. Senate Report No. 595, page 3, 67th Cong., Second Sess. (1922) reported on this section as follows:

> "The provision relating to unfair methods of competition in importation of goods is broad enough to prevent every type and form of unfair practice and is, therefore, a more adequate protection to American industries than any antidumpting statute the country has ever had."

There can be no doubt that Congress intended to write a statute broad enough to cover acts alleged in petitioner's complaint. The Senate committee report said it was designed to guard against all types of unfair trade practices. Complaint alleges that almonds from Italy and Spain have been and will be sold in the United States at less than fair value and that the difference is made up through improper exchange manipulation. The effect of the unfair trade practices are also set forth in the complaint. The committee report says that it enacted section 316 of the Tariff Act of 1922 (the same as section 337) in order to give more protection to domestic industries than any of the antidumping acts. This section was designed to supplement the Antidumping Act. It was never intended to be an exclusive remedy available only when no other exists.

Senate Report 37, 71st Cong., First Sess. reporting on the Tariff Act of 1930 further states that it eliminated a provision added by the House of Representatives empowering the President to raise the duty by 50% to offset violations of section 337. This provision was eliminated, the report explaining that since it was an inadequate remedy it should not be included as a means of alternative relief.

The conclusions derived from the statutory history of this section lead to an opposite result from that of the Tariff Commission. Congress intended section 337 to cover all kinds of unfair acts; it intended that this section should present a more adequate remedy than the antidumping statutes, and it was an unmistakable effort to protect domestic producers from unfair competitive practices and acts of foreign producers.

II. DECISIONS OF THE COURT

There are two leading cases which, when taken together, have gone far in delineating the scope of section 337. In *Frischer & Company* vs. *Bakelite Corporation*, 39 F(2d) 247 (1930), the Court had before it an unfair practice in the plastics industry. The Tariff Commission found on the facts that an unfair practice within the scope of section 337 existed. There the Court said: "What constitutes unfair methods of competition or unfair acts is ultimately a question of law for the Court and not for the Commission". The Court went on to say: "Each case of unfair competition must be determined upon its own facts * * *" In this case the Court had an example of a foreign importer palming off its goods as that of a domestic producer. That, of course, is a classic example of an unfair trade practice. The Court made no attempt to limit the definition of unfair methods of competition and unfair acts. In fact, the Court cited the language, on page 259, of the Senate Report No. 595 and commented as follows:

> "It is very obvious that it was the purpose of the law to give to industries of the United States not only the benefit of the favorable laws and conditions to be found in this country, but also to protect such industries from being unfairly deprived of the advantage of the same and to permit them to grow and develop."

The other case, *In re Amtorg Trading Corporation*, 75 F(2d) 826 (1935), involved a complaint alleging patent infringement by Russia in the commercial production of phosphate rock. The Tariff Commission found the acts complained of were unfair methods of competition within the meaning of section 337. The Court of Customs and Patent Appeals reversed that holding stating that, as a matter of law, a patent holder is not entitled to protection abroad and therefore the Tariff Commission's findings must be reversed. The Court held that the Tariff Commission cannot find acts amount to unfair methods of competition when such have been legally declared not to be unfair. Here the basis of the complaint was patent infringement abroad; it had been held that a domestic producer is not entitled to patent protection in any country but the United States, therefore the actions complained of were not unfair. In arriving at this result the Court made the following observation:

> "This language (speaking of section 337) is broad and comprehensive. It covers a large field as do the words 'due process of law', 'unjust discrimination', may include acts which have never been specifically declared by the Courts to be unfair."

This recognizes the flexible connection of the phraseology "unfair methods of competition" and "unfair acts in the importation of articles into the United States." This is an evolving term. Deliberate currency manipulation resulting in the sale of articles into the United States by foreign exporters at less than foreign market value is of relatively recent origin.

Congress deliberately provided language broad enough to include new devices that might be developed as well as the existing classic instances of unfair trade practice. And the language is not limited to "unfair methods of competition" which it might be contended as having a somewhat restricted and technical meaning; the language includes as well "unfair acts in the importation of articles into the United States." This term is broad enough to include anything done that has an unfair result in connection with the importation of any article.

Thus, the Congressional intention in the enactment of Section 337 has been recognized by the Courts. These two cases both recognize that the language was intended to be broad and comprehensive; the only limitation being that such acts which have been declared not to constitute an unfair practice in prior decisions may not be considered as in violation of Section 337. The Court decisions emphasize that Section 337 was enacted to protect domestic industry. There is nothing in any of the Court opinions which indicate that the remedy under Section 337 may be pursued only if there is no other remedy available. There is much to indicate in the legislative history and the Court decisions that Section 337 was enacted to provide a truly adequate remedy covering all cases of unfair acts in importation of goods.

The complaint alleges unfair acts in the importation of articles into the United States within the meaning of Section 337. The result of the Tariff Commission's action can only mean that, on review, a Court must send the case back for investigation and hearing to determine whether the acts alleged can be proved.

JOHN BRECKINRIDGE,
Attorney for California Almond Growers Exchange.

POPE BALLARD & LOOS.
KARL D. LOOS.
JOHN BRECKINRIDGE.
JOHN F. DONELAN.
DICKSON R. LOOS.

Senator JOHNSON. We thank you for your appearance here and for the help you have given us in this matter.

Mr. BRECKINRIDGE. Mr. Chairman, we certainly appreciate the opportunity of appearing.

(The following excerpt from the Congressional Record of May 12, 1952, was subsequently made a part of the record on this subject:)

THE CALIFORNIA FIG INDUSTRY

Mr. HUNTER. Mr. Speaker, there has come to my attention two rather interesting letters. One is a letter written by Mr. John Breckenridge, an attorney at law, addressed to the Honorable Harry P. Cain, United States Senator, dated April 5, 1952. This letter was inserted by Senator Cain on page 3659 of the Congressional Record of April 7, 1952. The other letter, which is dated April 16, 1952, is written by the Honorable Charles F. Brannan, Secretary of Agriculture, to Senator Cain, in which Secretary Brannan comments upon Mr. Breckenridge's letter previously written to Senator Cain.

The subject of this correspondence is the action taken by the Secretary of Agriculture and others on an application filed on March 7, 1952, by the California Fig Institute with the United States Tariff Commission and the United States Department of Agriculture under the provisions of section 8 (a) and section 7—commonly referred to as the escape clause—of the Trade Agreements Extension Act of 1951, Public Law 50, Eighty-second Congress.

The relief requested by the California Fig Institute was the imposition of an absolute import quota on imports of dried figs which is necessary to lessen the present injury and to prevent further injury to the American growers and packers of dried figs caused by excessive imports of dried figs as a result of trade-agreement concessions—tariff reduction—contained in the General Agreement on Tariffs and Trade.

This application requested the Secretary of Agriculture to determine and report to the President and the Tariff Commission under the provisions of section 8 (a)

of the Trade Agreements Extension Act of 1951 that, because of their perishability, dried figs require emergency treatment in the investigation and determination of the need for relief in the form of an import quota under section 7 of said act. Said section 8 (a) provides that whenever the Secretary of Agriculture makes a determination that an agricultural commodity is perishable and requires emergency treatment under said section 7, final action by the Tariff Commission and the President must then be taken within 25 days.

Upon consideration of the case, the Secretary of Agriculture determined that the outlook for imports of dried figs in the balance of the 1951–52 season was not such as to require emergency treatment in the form of an investigation and action within 25 days. No determination was made as to whether dried figs should be classified as perishable. If figs are not perishable, I would like to know what agricultural commodities the Secretary thinks are perishable.

Now, to get back to the letters. The letter of the Secretary of Agriculture is devoted principally to taking exception to the statements made in the letter of Mr. Breckenridge. I am personally involved, because both parties quote me indirectly as to what transpired at a conference between Senator Richard Nixon and myself and Assistant Secretary of Agriculture Knox T. Hutchinson and Mr. Francis A. Flood, Acting Chief of the Office of Foreign Agriculture Relations of the Department of Agriculture. This conference was called for the purpose of discussing the application of the California Fig Institute filed with the Tariff Commission and the Department of Agriculture.

Upon reading the accounts of what went on at that conference, as contained in the letters of Mr. Brannan and Mr. Breckenridge, neither of which gentlemen were in attendance, I am of the opinion that neither has related with full accuracy or completeness what actually transpired. I do not criticize them for this, nor do I mean to impugn their veracity in the least, because, as I say, neither of them was present, and what they may know about that conference they necessarily had to learn from me or other parties present. And, as happens in the case of witnesses to an automobile accident, very seldom is the testimony identical.

I am not going into the details of what actually took place at this conference. Suffice it to say that I did not consider it a particularly satisfactory meeting. Mr. Hutchinson was present, having been handed a "hot potato" by Mr. Brannan. That in itself is not unusual, because one of Mr. Hutchinson's duties as Assistant Secretary is to catch hot potatoes. Mr. Hutchinon, however, only caught this particular hot potato a very short time before the meeting. Consequently, he knew practically nothing about it. Mr. Flood, on the other hand, although he knew more than Mr. Hutchinson about the subject at hand, did not impress me as being at all fully informed with respect to conditions in the fig industry and the reasons for its current request for relief. I had hoped that Senator Nixon and I would have the opportunity to discuss the matter with someone more fully cognizant of the facts than Mr. Flood or Mr. Hutchinson. I would have preferred that the Secretary had, himself, consulted with me and Senator Nixon, together with representatives of the fig industry—this particularly in view of the fact that the Secretary had previously consulted with importers. Such a conference was requested but turned down by the Secretary on the ground that his commitments were such that he did not have the time.

Regardless of what anyone may claim as to who said what to whom, the fact remains that following the conference in question, the Secretary reached a conclusion which was adverse to the American fig growers and favorable to the foreign fig growers and importers, a conclusion which I, as a Representative of a district in which substantial quantities of figs are produced, deeply regret.

In the Secretary's letter to Mr. Breckinridge, he advised the latter that Mr. Flood homesteaded in Wyoming and taught in various agricultural colleges, thus inviting the inference that Mr. Flood is a bosom friend of American farmers. Be that as it may, it does not alter the fact that Mr. Flood is employed by and paid by the Foreign Service of the State Department.

The Secretary states that the Department of Agriculture did not consult the State Department in this case. In my opinion, his disclaimer is entirely irrelevant since it would be unnecessary to consult with the State Department under the circumstances. Mr. Flood, as Chief of the Office of Foreign Agricultural Relations, is the principal adviser to the Secretary and to the officials of the Department of Agriculture on foreign-trade policy. He is, however, as I previously stated, an employee of the State Department and not the Department of Agriculture. Obviously, then, the State Deparment's influence could not help but be felt.

A considerable number of the Members of this body are becoming increasingly alarmed with the actions and attitude of the Office of Foreign Agricultural Relations. My distinguished colleague and fellow Californian, Mr. John Phillips, who has observed its operations for the last 15 years, is deeply concerned. Also uneasy about the situation are such gentlemen as Mr. Horan, of Washington, and Mr. Whitten, of Mississippi. This office was established for the purpose of serving the interests of United States farmer by observing and reporting conditions in foreign countries which are of importance from the standpoint of competition and export demand. I understand this to mean that the Office should help American farmers not only in finding export outlets for their products but also help protect American farmers in every way it can against unfair foreign competition. It is astounding to me, however, to observe that more and more this office seems intent upon finding markets for the agricultural products of other nations in this country to the detriment of domestic producers. Not only that, its representatives have been known to encourage other countries to buy their own agricultural needs, not from American farmers but from producers in nondollar areas, thereby saving those countries' dollar exchange for the purchase of other United States products.

It is indeed unfortunate that the principal adviser to the Secretary of Agriculture and to the officials of the Department of Agriculture on foreign-trade policy is employed by and paid by the Foreign Service of the State Department. The primary interest of the Department of Agriculture should be in the problems and welfare of American farmers. To have as its principal foreign-trade adviser a person employed by and paid by the State Department is inconsistent with that interest. No matter what such adviser's background may be or no matter how great his ability and integrity, he cannot help but listen to and be influenced by the policies of the State Department, which at no time in recent years have been consistent with the best interests of a very large segment of American agriculture.

It is to be remembered that Secretary of State Acheson was opposed to the escape clause in the Trade Agreements Act, in the first place, and ever since its enactment last year, he has been engaged in a continual rearguard fight against it.

Willard L. Thorp, Assistant Secretary of State in charge of economic matters, said in a New York speech the other day that he was greatly concerned with the significant increase in demands of American producers for protection.

Secretary Acheson says that the escape clause should be applied only to cases of genuinely serious injury to domestic industry. Apparently, serious injury to him means that a farmer must lose his market, his land and his barn and ask to be put on relief rolls before he has suffered genuinely serious injury.

Those sick-hearted souls who are losing sleep because farmers are asking for protection against foreign imports would do well to come out to California and sit under a fig tree long enough to see what is going on. They will discover that fig growers there have an investment of some $35,000,000 in land and equipment. They also have an investment of years of toil and dedication to the culture of a fruit which the Federal Government itself years ago encouraged and actually promoted as a proper agricultural activity for the area. They have homes and families. They are an established integral and valuable part of America. They are willing to compete with anyone in the sale of their product as long as conditions of competition are anywhere near fair.

There is a limit to the extent to which these farmers can reduce their costs of production by efficiency and hard work, and they have pretty well reached that limit. They are caught in an over-all price structure over which they have no control. They either pay $1 per hour for unskilled farm labor, or they go without, and the figs are not harvested. The processing plants either pay $3 per hour for skilled piece-rate workers, or those workers will go somewhere else—the aircraft industry, for example. Like labor, the cost of equipment and materials is also high and beyond their control.

These farmers cannot compete with figs from the Mediterranean, where the standard of living of the producer is far lower—where there is no such thing as a minimum wage. Costs of production despite a relative lack of efficiency and mechanization, beat anything the American producer can possibly match. On top of that there being a great demand for dollar exchange, foreign governments have developed a practice of manipulating their currency values in a manner which further accentuates the cost differential and produces a price that reflects even less than the real cost of the exported product.

And, to add a note of irony to the situation, the foreign fig producer is now threatening the livelihood of the American fig producer because of increased production and improved quality made possible by United States financial and technical assistance for which the American producer was required to contribute in the form of taxes. The California fig growers have been made to pay for their own possible extinction. And, you wonder why they are protesting.

In recent years, an unhealthy transformation has taken place in the makeup of the Office of Foreign Agricultural Relations. The International Commodities Branch, which has within it a number of very able men, well acquainted with the commodities with which they are concerned and having first-hand knowledge of the problems of American producers of those commodities, had been gradually pushed in the background while more and more attention and money has been given to the Regional Investigation Branch, which is composed of persons, a considerable number foreign-born, who know practically nothing about American agriculture and are not particularly well-informed as to agricultural matters in the countries from which they come or with which their duties are concerned.

It is the Regional Investigation Branch which has represented American agriculture at the international trade agreement conferences. This branch has given indication time and again that it is more interested in finding markets in the United States for foreign producers of agricultural products rather than finding foreign markets for American producers of such products. California specialty crops, which do not benefit under the mandatory price support programs and which are trying their best to stand on their own feet, have been and are being sacrificed in the interest of their foreign competitors.

Even the House Committee on Appropriations is disturbed by the apparent subordination of the Office of Foreign Agricultural Relations to foreign-aid programs and the Department of State. It is so stated in its report accompanying the Department of Agriculture appropriation bill for fiscal year 1953. It is particularly disturbed by the fact that section 32 funds have been used in the purchase of mandatory support items for foreign aid. What has been done is to help bail out the Commodity Credit Corporation, which has been burdened with a surplus of these items. This practice is inconsistent with the main purpose for which section 32 funds are allocated, namely, to aid in the marketing of nonmandatory support crops, of which California specialty crops constitute an important part.

It is interesting to note that the House committee reduced the budget request of this office by $135,000. There is good reason to feel that the appropriations should be further reduced or entirely transferred to the State Department until clear evidence is shown by that office of complete independence of influence by the State Department and that the primary function it is performing is to serve the interests of American agriculture. In my opinion, unless it primarily serves the interest of American agriculture, it has no place in the Department of Agriculture.

Getting back to the subject of figs, the Secretary in his letter to Mr. Cain states that only 300 tons of foreign figs suitable for shipment to the United States during the remainder of the 1951–52 season were available in foreign countries as of January 1, 1952. The actual fact appears to be—from import figures furnished to me by the fig industry—on the other hand, that from January 1, 1952, through April 25, 1952, 1,476 tons of foreign figs have actually entered the United States destined for consumption in the United States: 637 tons in the form of whole dried figs and 839 tons in the form of fig paste. Thirty-eight tons arrived during the week ended April 25 and there is no indication that many more tons will not arrive between now and July 1. Both whole dried figs and the fig paste have the identical competitive effect in the United States market. Approximately 80 percent or more of the whole dried figs imported into the United States are converted to paste and used by bakers in fig bars. Competitive-wise it makes absolutely no difference whether bakers bring dried figs into the United States in the form of whole dried figs for the purpose of making paste or in the form of paste made in a foreign country. We do not know where the Secretary obtained his figure of 300 tons, but the fact is—if my figures are correct—that this figure represents approximately a 400-percent error. The above import figures were furnished by a private reporting concern in New York, which has been utilized by the California Fig Institute for several years and which has always been highly reliable. The figures are always very close to the official Department of Commerce figures when they finally become available 2 or 3 months later.

The Secretary then states that only about 3,000 tons of figs have entered the United States for consumption between July 1, 1951, through January 31, 1952,

and implies that that quantity was only about one-half what the fig industry indicated were to come in. I think this is an entirely unfair implication of a misstatement of facts by the fig industry and is wholly unsubstantiated by the facts available to me. The facts show that the fig industry indicated that imports for the entire crop year would probably reach 6,000 tons and actually to date, imports of figs—in the form of whole dried figs and in the form of dried fig paste—have totaled 7,992 tons, of which 2,154 tons have been rejected by the Food and Drug Administration as unfit for human consumption.

The Secretary further states that American shipments of figs to date in the current crop year have exceeded those of the last crop year. He fails to state, however, that the relatively small shipments of last crop year were from a crop that was one-fifth below normal and that even with such a short crop that American figs backed up in the hands of packers had a substantially excessive inventory on hand at the end of the crop year, July 1, 1951, which was caused primarily by excessive imports.

The Secretary also fails to state the very significant fact that the shipments this crop year have been made at a very substantial financial loss to the fig packers and that figs have been selling for some time at less than the packers paid the growers therefor. I am informed that the Tariff Commission has information to prove that the American fig packers have lost almost $800,000 this crop year on a crop of figs worth approximately $5,500,000. That is a loss in excess of 10 percent of the entire value of the crop to the farmers. Certainly, it is unfair to imply that because the fig packers have shipped a small quantity of figs this year, at a loss, in excess of their shipments last year from a short crop indicates that no relief is justified. The Secretary, in his letter, then reaches the conclusion that during the remainder of the 1951–52 season, that domestic demand would have to be satisfied almost wholly from domestic sources until the new shipping season starts. This is wholly inconsistent with the fact that during the month of March and to April 25, 723 tons of foreign figs have entered the United States to satisfy domestic demand, while an equal amount of excessive carryover in the hands of American packers remains in warehouses in California.

In the Secretary's letter, he apparently assumes that the request for emergency treatment was made only in order to restrict imports during the balance of the current crop year. This assumption is incorrect, but even so, the necessity for emergency treatment would still be present. If relief is justified and is to be granted in the form of a quota for the coming 1952–53 crop year which begins July 1, 1952, every day of delay reduces the effectiveness of such relief in the desired effect of raising grower prices to or near parity. In my opinion, the Secretary fails to recognize the psychological effect that would result from an early announcement of relief. If a limitation of imports for the coming crop year were announced immediately or had been announced 30 days from the time the application was filed with the Secretary, an immediate firming of American prices would have had a much greater beneficial effect on grower prices than would an announcement of an import limitation on July 1, August 1, or September 1. A late announcement of an import limitation would help the packers much more than it would help the growers whose prices may have already been determined and who are currently finding great difficulty or inability to obtain bank credit for working capital.

In my opinion, the Secretary has not properly interpreted section 8 (a). That section was intended by Congress as an instrument which would enable him to anticipate difficulties and take corrective action well before those difficulties materialized. In my opinion, the following colloquy between Senator Holland, the author of section 8 (a), and Senator George, the manager of the trade-agreements bill on the floor of the Senate, clearly indicates the unmistakable intention that section 8 (a) be used as a preventive measure, well in advance of any adverse occurrence, rather than a corrective measure after the injury has occurred—Congressional Record, May 23, 1951, page 5806:

"Mr. HOLLAND. In connection with this question, I also submit my fourth question, as follows: In using in the report the following language, 'The planting, offering for sale, or shipment of large quantities of perishable products within or without the country may create conditions which may require emergency action,' is it the intent that, when the Secretary of Agriculture reports in advance of planting and/or harvesting that such conditions exist, or threaten to exist, the President shall be authorized to take emergency action which will prevent the existence of these conditions rather than being compelled to wait until they actually occur?

"Mr. GEORGE. Section 8 (a) is designed to offer relief, on the speediest basis possible, in accordance with the provisions of section 22 of the Agricultural Ad-

justment Act and the provisions of the escape clause in section 7 of the bill. Under both these provisions it is not necessary to delay remedial action until the injury has actually occurred.

"Mr. HOLLAND. I particularly appreciate that answer because it makes clear for the record that neither the Secretary of Agriculture nor the President of the United States must needs wait until the actual excess amount of production is in hand, but that they are required to and may exercise reasonable foresight and caution to determine, ahead of the actual existence of the excess product, the fact that there will be such an excess or that such an excess is seriously threatened."

I hope that under the circumstances the Secretary of Agriculture will reconsider his decision and determine that emergency relief under section 8 (a) is necessary for the relief of the dried-fig industry.

It is unfortunate, indeed, that the critical problem currently facing the American fig industry should get mixed up in a debate between the Secretary and Mr. Breckinridge. I most certainly hope it is not the Secretary's intention to divert attention from that problem by attacking the integrity and veracity of an individual spokesman for the industry. I have become involved because I am interested in helping the California fig industry as well as all California specialty crops. Any interest which I may have in Mr. Breckinridge is incidental to that primary interest and springs from the fact that he has represented the fig growers and also the producers of numerous California specialty crops in their efforts to obtain protection against unfair competition from foreign countries. In my opinion, as in the opinion of other Members of the California delegation, Mr. Breckinridge is to be commended for his vigorous approach and his courage of conviction in striving to correct a situation existing in the Office of Foreign Agricultural Relations as well as elsewhere in the Government which is detrimental to the interests of a great many of the farmers of America.

Senator JOHNSON. Does anyone else here desire to testify? If not, the hearing is recessed until 10 o'clock tomorrow morning.

(Whereupon, at 12:05 p. m., the committee recessed, to reconvene at 10 a. m. Tuesday, April 29, 1952.)

CUSTOMS SIMPLIFICATION ACT

TUESDAY, APRIL 29, 1952

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 312, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George, Kerr, and Flanders.

Also present: Elizabeth B. Springer, chief clerk; and Serge N. Benson, professional staff member.

The CHAIRMAN. The committee will come to order.

Mr. Moss, you may come around.

Senator O'Mahoney is scheduled first, but he is not here, so we will just go right ahead.

Mr. Moss. Thank you, Senator.

The CHAIRMAN. Other members of the committee may get in. You may identify yourself for the record.

STATEMENT OF HARRY A. MOSS, JR., EXECUTIVE SECRETARY, AMERICAN KNIT HANDWEAR ASSOCIATION, INC.

Mr. Moss. My name is Harry A. Moss, Jr. I am secretary of the American Knit Handwear Association, Gloversville, N. Y.

The CHAIRMAN. You may be seated.

Mr. Moss. Thank you.

The CHAIRMAN. You are appearing for whom?

Mr. Moss. American Knit Handwear Association.

The CHAIRMAN. Handwear Association?

Mr. Moss. Yes.

The CHAIRMAN. All right, sir. What is that association?

Mr. Moss. This association, Senator, represents the United States manufacturers of seamless knit gloves and mittens, and we are pleased to go on record in favor of simplification of customs administrative laws. We do not think it is fair to impose unnecessary burdens on importers by maintaining administrative provisions which hamper trade.

At the same time, we do assert the need for continuation of a protective tariff system in this country for many industries such as ours. We believe that Congress should be critical of any moves which would undermine the protective tariff system which has been established by Congress. Any move which might weaken our tariff in the name of customs simplification should be scrutinized.

Some sections of the bill need comment. However, the shortness of the hearings notice and the preoccupation of our industry in supplying gloves for the military compel us to limit our preparation and comment. Furthermore, we note that the more controversial points have been already analyzed by prior witnesses. Therefore, we wish to touch upon the following points:

Section 2. Antidumping and countervailing duties: We see no valid reason why section 303 of the 1930 Tariff Act should be amended so that the procedures leading to imposition of a countervailing duty will be broadly the same as those required in the Antidumping Act of 1921.

Section 3 would require that the Secretary of the Treasury not only find, as is now required, that an imported article enjoys the benefit of a foreign export subsidy, but that, in addition, it be determined that an American industry is being, or is likely to be, injured or is prevented or retarded from being established.

What justification is advanced for thus weakening the countervailing duty procedures? We wonder why some American industry, like ours, should be subjected to providing proof of injury, in addition to proof of foreign government subsidy? We contend that the test of injury is an added burden in protecting American industry and should be deleted. It is to the advantage of industries such as ours that the present countervailing duty provisions be maintained.

Section 3. Special marking provisions: We favor elimination of unnecessary marking restrictions. We trust it will be clear from the committee's report that such simplification of administration will in no way endorse leniency in the basic enforcement of the marking requirements set forth in section 304 of the 1930 Tariff Act. We strongly urge strengthening of the provisions to prevent unfair competition.

Section 11. Administrative exemptions: The exemption of $10 shipments from tariff duties, as proposed herein, is important. It cannot be too emphatically objected to. We will predict that should this section remain as written, many industries will be so injured by mail-order import competition that Congress will be swamped with legitimate complaints. The result may be an overwhelming demand for a quota or other severe measure to afford summary relief. It takes little imagination to foresee the number of items selling at less than $10 per unit, foreign value, which can be sold in this country through a mail-order catalog, to realize the flood of import competition which this exemption could let loose, and I do not believe there is any more that need to be said on the subject.

Section 13. Value: It is proposed that section 402 of the 1930 Tariff Act be amended, first of all by eliminating foreign value. We understand, from prior testimony of the Treasury Department, that foreign value is difficult to ascertain and that export value, the present alternative, is predominantly used in assessing foreign merchandise. Much as we would prefer retention of foreign value, if it is impractical of ascertainment, we concede its deletion.

Note, however, that the dropping of foreign value herein should not in any way be construed to detract from retention of the Antidumping Act of 1921 in its present form.

In this connection, we suggest that in the fostering of simplification, the U. S. Tariff Commission be empowered by Congress to make the investigations and recommendations required under the Anti-

dumping Act and the countervailing duty provisions of the Tariff Act, in line with the purpose for which the powers of the Tariff Commission have been broadened since 1922.

As for comparative value, we are at a loss to discover why it has been introduced in this bill as an alternative basis of valuation, and we plead that it be stricken from the proposed act. It is so loosely defined that it is potentially a loophole for assessment of lower tariff rates in addition to being unnecessary.

Section 20 on conversion of currency seems to have been introduced with no tangible foundation in simplification of customs procedure, and we recommend that it be deleted from the proposed act.

That completes the statement of our industry, Mr. Chairman.

The CHAIRMAN. You have introduced your entire statement into the record?

Mr. MOSS. Yes, sir.

The CHAIRMAN. Thank you.

Mr. MOSS. Thank you, sir.

The CHAIRMAN. Mr. Casey? Mr. Casey, you may be seated, and identify yourself for the record, please, sir.

STATEMENT OF JAMES H. CASEY, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF LEATHER GLOVE MANUFACTURERS

Mr. CASEY. Mr. Chairman, my name is James H. Casey, and I am executive secretary of the National Association of Leather Glove Manufacturers.

The CHAIRMAN. All right, Mr. Casey, we will be glad to hear you. If you have a written statement you wish to present, you may do so.

Mr. CASEY. No; I have not, Senator.

I will be very brief in what I have to say.

There are two things in this bill that we wish to emphasize, which should be given some consideration by the committee here. One is the problem we have had with France on the importation of leather gloves.

Back in November 1951, through a multiple-exchange rate, they were allowing the importers of French gloves 480 francs to the dollar. To a few importers where there was a transaction between heavy machinery industries and the importers of French gloves, that is what they were allowing, and we called the attention of that manipulation to the Tariff Commission and to the Secretary of the Treasury and the Commissioner of Customs and also to the attention of Senator Lehman, Senator Ives, and Congressman Kearney of our congressional district from up-State New York, to follow through in this matter, because it was becoming very serious; and up until this time we have had several letters from the various Senators and Congressmen involved in that case, and have had no satisfaction. In other words, it is one of those cases that has been a situation where the Customs have taken no initiative or Tariff has taken no initiative to go forward with this whole thing, and we are quite concerned now with the countervailing duties, as they are outlined in this particular bill, and the same way of imposing these duties where there is definite showing of a subsidy being made by one country or another.

Now, it has been our opinion in this whole case that a year ago, after the Torquay Conference, they did adjust the tariff rate on gloves

by 10 percent, and we think it is a retaliation by the French Government and the French glove industry to give this multiple-exchange rate to glove manufacturers as a means of really thwarting the good work that we did previously. That is No. 1.

No. 2 is that gloves are a very low-cost item in Europe, and with all the talk there has been about allowing merchandise to come into the country duty free up to $10, we are quite concerned with that, because I think, as you know, in this country there is a great tendency now to merchandising directly to the consumers that is away from the retail level. It is being done in this country by a very large scale by a half-dozen concerns. I am not speaking of concerns like Sears who merchandise items by direct mail, but I am speaking of concerns like John Main & Co., Meyers of New York, who take standard commodities and merchandise them without a retail outlet, but directly from a warehouse to you or to me; and we are afraid the same situation could easily develop in European countries, whereby they would merchandise, say, gloves or any other commodity directly from a warehouse there to you or to me, eliminating any possible retail tie-up, and permitting gloves to come in directly, which would be very harmful to our industry.

Those are the two points that we are stressing.

The CHAIRMAN. What does this bill provide? I have been unable to study it very much. I was not here last week.

Mr. CASEY. Well, you see, if they permit——

The CHAIRMAN. As it now provides, it would eliminate the $1 limitation and put on a $10 limitation.

Mr. CASEY. That is right.

The CHAIRMAN. On the basis of foreign value or domestic?

Mr. CASEY. That is right, foreign value.

The CHAIRMAN. Foreign value.

Mr. CASEY. That is right.

It is quite a concern to us; also it is a big concern to the retailers, more so than it is to the manufacturers, but certainly a very big concern to the retailers, too, because this distributing directly from warehouse to consumer has become quite a practice in the United States, and it is done on a very large scale, and it wouldn't take very long to establish the same situation in the European countries.

The CHAIRMAN. I suppose the Treasury contention or the contention of the Customs people is that it is——

Mr. CASEY. Cumbersome.

The CHAIRMAN. And it costs more?

Mr. CASEY. That is right.

The CHAIRMAN. But a $10 foreign value will certainly permit a large influx of merchandise into this country, I would think.

Mr. CASEY. I could think of many items, many small items, like hosiery, gloves, ties, handkerchiefs, fountain pens. You could, perhaps, go on ad infinitum with items that could come in.

The actual declared value of gloves for 1951 is a little over $2 a pair, and it would not be very hard for a person to bring in four pair at a time, and saving the duty, and buying directly from European countries.

That is, Senator, what we had in mind, other than what has already been covered in the bill, but those are two things that have struck us that have very keenly involved our industry, and that is what I wanted to call your attention to.

The CHAIRMAN. Thank you very much, Mr. Casey.

Mr. CASEY. Thank you, sir.

The CHAIRMAN. Senator O'Mahoney, we have been expecting other members of the committee to be here.

Senator O'MAHONEY. I know your difficulty. I am confronted with that myself.

The CHAIRMAN. You can keep your seat up here.

Senator O'MAHONEY. Well, I will go down there and look you right in the eye.

The CHAIRMAN. All right. We will be very glad to hear you on this bill. H. R. 5505, the so-called simplification bill.

STATEMENT OF HON. JOSEPH C. O'MAHONEY, A UNITED STATES SENATOR FROM THE STATE OF WYOMING

Senator O'MAHONEY. That is right; that is what I wanted to speak about, Mr. Chairman.

The CHAIRMAN. Senator Mundt wrote a letter to the committee on the same point on which you intend to speak.

Senator O'MAHONEY. I am sure he did.

The CHAIRMAN. He expressed an interest in it and he said he could not be here this morning and would like to have his letter go into the record.

All right, Senator.

Senator O'MAHONEY. My difficulty arises from the fact that I have to open a meeting of the Committee on Interior and Insular Affairs at 10:30.

The CHAIRMAN. Yes.

Senator O'MAHONEY. I was delayed in coming here by telephone calls from the Interior Department and from the White House, so the chairman will understand the difficulties under which we operate.

Now, the problem before us arises from what appears to be the failure of the Department of the Treasury to construe the clear and explicit language of section 303 of the Tariff Act of 1930 which imposes countervailing duties whenever any bonus or bounty or grant is bestowed by an exporting country on the exportation from that country of commodities into the United States.

The CHAIRMAN. It is a countervailing-duty provision, I suppose, that we put in in the 1930 act, Senator. You say it is section 303?

Senator O'MAHONEY. That is right.

The CHAIRMAN. Yes.

Senator O'MAHONEY. That is right.

Now, it appears that in recent years the practice has been adopted in some foreign countries of using multiple rates of exchange.

The representative of the Treasury appeared here before this committee, Mr. Southard, and Assistant Secretary Graham, also, and argued that it is impossible to tell whether multiple rates of exchange are bounties or grants, and as a consequence of that, although requests have been filed with the Department of the Treasury for the imposition of countervailing duties on the importation of wool tops, the Treasury has failed to act.

Early in February of this year I called a meeting of Members of the House and Members of the Senate from States which are concerned

in the wool industry. There was a very full discussion at that time of the problem which confronts the industry. It is in a seriously depressed state. Prices are low, raw wool is not moving—domestic raw wool in the United States is not moving—and, at the same time, the textile industry is not moving its products. Some of the mills have been closing; the manufacturers of wool tops have had their difficulties, and wool tops, which, you know, are the combed wool, have been coming in from Argentina and Uruguay.

Now, there is no doubt about the fact that a rate of exchange of seven and a half pesos per dollar is permitted by the Government of Argentina on wool tops, and a rate of exchange of only 5 pesos on raw wool.

The obvious effect of that is to encourage the processing of raw wool in Argentina into the form of wool tops for exportation into the United States, and a very marked increase of importation has taken place.

Now, in the present distressed state of the world, fiscally as well as otherwise, every country wants American dollars, and so they are using every means at their hand to obtain American dollars for the purposes of their own country, sometimes, as the Treasury said, perhaps, to build up revenue; sometimes to promote the exportation of particular products and particular goods; but we know very well that the world now depends upon the soundness of the American dollar.

The producers of wool in the United States and the manufacturers of wool textiles are among those who bear the heavy burden of taxation which this country has imposed upon itself in order to enable it to lead the world.

I have a very deep feeling that we cannot safely allow any segment of our economy to be injured while we are carrying this heavy burden of taxation to serve the world if we expect to attain that objective, and certainly we cannot permit any executive department of Government to exercise discretionary power as to whether or not a specific law of Congress should be carried out, and that is the issue which is presented to us in the enforcement of section 303.

Under date of February 21, as a result of this conference, I wrote a letter to Secretary Graham in which I attempted to analyze the meaning of section 303. Let me read two paragraphs, two or three paragraphs, from this letter:

> The obligation of the Secretary of the Treasury to impose a countervailing duty clearly arises—

I am quoting now from the statute—

> "whenever any country shall pay or bestow, directly or indirectly, any bounty or grant, etc." The use of the words "pay or bestow" in the alternative and the words "directly or indirectly" to modify the words "any bounty or grant" could be designed only to show that Congress wanted to prevent any country from avoiding any tariff rate imposed by our law by any device or method.
>
> That it was not the intention of Congress to allow the Secretary discretionary power to determine whether or not a device which has the effect of granting a preferential position to any exporter from any other country is a "bounty or grant" not only by the fact that section 303 provides for a mandatory countervailing duty but by the fact that in the clause imposing the additional duty, the section describes it as being "equal to the net amount of such bounty or grant, however the same may be paid or bestowed."

If it is paid or bestowed through the device of a preferential rate of exchange, it comes clearly within the mandatory provision of that statute.

The attempt was made in the House to compel the Treasury to follow the plain meaning of that language by writing in section 2 (c) of the bill before you, Mr. Chairman. This provides for an amendment of section 303 by inserting after the words "corporation shall" in the first sentence the words "through multiple official rates of its exchange in terms of United States dollars or otherwise."

The reason for that was that it was attempted to make clear in the law that a multiple rate of exchange could be a bounty or grant.

The Treasury has avoided the issue, as it seems to me, by the argument that sometimes a rate of exchange, a multiple rate of exchange, is used for the purpose of raising revenue where it is used as a penalty. But the important facts, so far as we are concerned, I think, were confessed to this committee in the testimony of Mr. Southard.

I am reading the following sentences from his testimony. After having described some of the methods, the purposes for which a multiple rate might be used, he said (reading):

> This is not to say that multiple rates of exchange may not be used in order to bestow bounties or grants. As I have indicated earlier, the Treasury has always felt that it is possible for a foreign country to utilize a multiple exchange rate system in order to bestow such bounties or grants.

There is the nub of this whole argument.

I submit that the facts before us demonstrate beyond peradventure of doubt that the 7½-peso rate has been used as a bounty or grant to stimulate the exportation to the United States of wool tops.

I want to file for the record a letter which I received from the United States Tariff Commission. At the same time that I wrote to the Treasury Department I wrote to the Tariff Commission requesting the Tariff Commission to report the facts with respect to the effect of the multiple rates of exchange. I should be glad to file this with the reporter for the record.

The CHAIRMAN. Yes, sir; we will be very glad to have you do so.

(The document referred to is as follows:)

UNITED STATES TARIFF COMMISSION,
April 28, 1952.

Hon. JOSEPH C. O'MAHONEY,
United States Senate.

DEAR SENATOR O'MAHONEY: Pursuant to the request in your letter of March 7, I am transmitting herewith a memorandum with respect to preferential exchange rates in Argentina and Uruguay and the effect upon the United States imports of wool tops. The memorandum does not undertake to discuss the effects of the multiple-exchange-rate practices of Argentina and Uruguay upon the combined imports of raw wool and wool tops and upon the wool-growing industry of the United States.

We are preparing for you material on the multiple-exchange practices of Nazi Germany and of Spain in recent years with respect to almonds for export to the United States. As soon as this material is ready, it will be sent to you.

With best wishes, I am

Sincerely yours,

OSCAR B. RYDER, *Chairman.*

PREFERENTIAL EXCHANGE RATES IN ARGENTINA AND URUGUAY AND THEIR EFFECT UPON THE UNITED STATES IMPORTATION OF WOOL TOPS

INTRODUCTION

Large imports of wool tops from Argentina and Uruguay during 1951 and indications of even larger imports in 1952, particularly from Uruguay, at prices substantially below those of United States producers have materially contributed

to the current depressed condition of the domestic top-manufacturing industry. The effect of the increased imports has been accentuated because worsted business in the United States has been poor for over a year, and signs of an upturn are not yet evident.

Domestic production of wool tops in January 1952, which amounted to 14.7 million pounds, was about 11.5 million pounds less than in January 1951. Uruguayan official data on export sales indicate that approximately 10 million pounds of wool tops were sold to United States customers during the first quarter of 1952, and will probably be delivered by the end of June; in January–February 1952, imports from Uruguay were 1.7 million pounds. Imports from Argentina, nearly all of which were warehouse withdrawals, were 0.5 million pounds in January–February 1952.

The South American exporters have been able to sell tops in this market at prices below those of domestic tops of comparable grades through the application of preferential exchange rates. Wool tops may be exported from Argentina at a rate of 7.50 pesos to the dollar as compared with a rate of only 5 pesos to the dollar on exports of raw wool. Uruguayan wool tops may be exported at a rate of 2.35 pesos to the dollar and raw wool exports may be effected at a rate of only 1.519 pesos to the dollar. Thus Argentine tops have had an advantage of 50 percent and Uruguayan tops have had an advantage of about 55 percent over their raw material. One result of this situation has been the offering of South American wool tops in the United States at prices approximately the same as those of South American raw wool of corresponding grades; in some instances the tops have been sold for lower prices than the wool.

UNITED STATES INDUSTRY AND TRADE

Wool tops, an intermediate product in making worsted yarns, are combed wool sliver from which the shorter fibers (noils) have been removed by the combing process. Tops are marketed in recognized grades, identical with the grades of wool from which they are made; they are easily transported and enter extensively into national and international commerce. In the United States about two-thirds of the wool tops are combed by integrated mills for their own use or for sale and about one-third is produced by commission combers for so-called topmakers who sell their tops to worsted yarn spinning mills.

Summary of United States production and trade.—United States annual production of wool tops fluctuated appreciably in the period 1947–51, averaging a little over 300 million pounds in 1947–48, decreasing to 197 million pounds in 1949, increasing to 283 million pounds in 1950, and decreasing to 217 million pounds in 1951. The large increase in 1950 over 1949 may be attributed to the sudden upturn in business occasioned by the outbreak of hostilities in Korea, and the subsequent decrease in 1951 resulted from the fact that buyers' inventories were built up in anticipation of shortages which did not materialize.

United States exports of wool tops were large during World War II and in 1946 and 1947 because many countries which normally export large quantities of tops were unable to do so during this period because of war damage, enemy occupation, and other adverse economic conditions. Since 1947 domestic exports have been negligible.

During the 1930's and the 1940's, up to 1948, United States imports for consumption represented a small fraction of 1 percent of total United States production of wool tops. Prewar imports were not strictly comparable with the bulk of domestic production and were largely confined to tops of high grade and value, or tops of fiber not widely used in this country, such as camel hair and alpaca. Since 1947 imports have tended to increase substantially, and have been of grades (56's and 64's) and qualities competitive with the wool tops produced in the United States. Imports in 1951, amounting to 10.4 million pounds, were nearly 5 percent of domestic production in that year, and the ratio of imports to production, on a quantity basis, in the first quarter of 1952 was probably 10 to 15 percent.

Table 1 shows United States production, exports of domestic merchandise, and imports for consumption, specified years, 1937 to 1951.

TABLE 1.—*Wool tops: United States production, exports of domestic merchandise, and imports for consumption, specified years, 1937–51*

Year	Production	Domestic exports	Imports for consumption	Ratio (percent) of imports to production
	Quantity (1,000 pounds)			
1937	178,611	(1)	247	0.14
1939	202,694	(1)	100	.05
1943	(1)	2,625	221	(1)
1946	(1)	3,437	117	(1)
1947	311,170	7,101	264	.08
1948	299,901	262	3,934	1.31
1949	197,124	96	2,195	1.11
1950 [2]	282,791	54	4,205	1.49
1951 [2]	216,949	47	10,399	4 79
	Foreign value (1,000 dollars)			
1937	(1)	(1)	213	(1)
1939	(1)	(1)	78	(1)
1943	(1)	3,054	155	(1)
1946	(1)	3,607	127	(1)
1947	(1)	9,299	283	(1)
1948	(1)	334	5,682	(1)
1949	(1)	134	3,024	(1)
1950 [2]	(1)	117	5,004	(1)
1951 [2]	(1)	73	24,385	(1)

[1] Not available.
[2] Preliminary.

Source: Compiled from official statistics of the U. S. Department of Commerce.

United States production.—The production of wool tops in the United States has decreased considerably since the latter part of 1950. The worsted industry experienced a sudden upsurge in orders immediately after our troops went into Korea, when buyers increased their inventories to record levels as a hedge against expected shortages, and the individual consumer stocked up on clothing for the same reason. When it became apparent that clothing was going to be readily available, buying dropped off and fabric dealers and apparel manufacturers endeavored to reduce their inventories to normal requirements. For more than a year the top-producing industry has operated at considerably less than capacity, many plants have been operating on reduced shifts, and some have shut down.

Table 2 gives the production of wool tops in 1950–51, and in January 1952, by weekly averages.

TABLE 2.—*Wool tops;* [1] *United States production, by weekly averages, 1950–51 and January 1952*

[Quantity in thousands of pounds]

Month	1950	1951	1952	Month	1950	1951	1952
January	5,142	5,278	2,942	August	6,298	3,969	.....
February	5,894	4,640	.....	September	5,821	3,608	.....
March	5,648	4,187	.....	October	6,155	3,168	.....
April	5,057	5,429	.....	November	5,059	3,168	.....
May	5,094	5,091	.....	December	4,813	3,236	.....
June	5,029	4,908	.....				
July	4,461	3,395	.....	Average for year	5,438	4,172	.....

[1] Total tops processed on worsted machinery except rayon.

Source: Bureau of the Census

Machinery activity.—Another indication of the depressed condition of the domestic top-producing industry is given by official data on the hours of operation of combing machinery. Combing activity in January 1952 was at a postwar low. Table 3 shows weekly averages of the hours worsted combs were operated, by months, 1950–51, and January 1952.

TABLE 3.—*Activity of worsted combs in the United States, by months, 1950–51, and January 1952*

[Weekly averages in thousands of hours]

Month	1950	1951	1952	Month	1950	1951	1952
January	185	194	110	August	233	142	----
February	209	164	----	September	227	129	----
March	207	139	----	October	233	124	----
April	186	200	----	November	191	120	----
May	191	185	----	December	176	119	----
June	187	184	----				
July	167	131	----	Average	205	153	----

Source: Bureau of the Census.

United States tariff.—The duty on wool tops was 37 cents a pound plus 20 percent ad valorem in the Tariff Act of 1930; the specific rate was intended to be compensatory for the duty on raw wool. Subsequent reductions were made as a result of the trade agreement with the United Kingdom (1939), and under the General Agreement on Tariffs and Trade at Geneva (1948) and at Torquay. The present rate, 27¾ cents a pound plus 6¼ percent ad valorem, became effective June 6, 1951. The ad valorem rate has been reduced the maximum allowable under present law.

United States imports.—Imports represented a negligible portion of United States consumption of wool tops until 1951, when they amounted to 10.4 million pounds and were equal to nearly 5 percent of domestic production, of which 7.6 million pounds, equal to 3.5 percent of domestic production, were from Argentina and Uruguay.

Before World War II, the United Kingdom, France, and Belgium were the principal suppliers, and those countries continued to be important suppliers in postwar years. Wool tops from Argentina and Uruguay, however, entered the domestic market in substantially increased quantities in 1950 and in much larger quantities in 1951; those two countries supplied 63 percent of the total imports in 1950 and 73 percent in 1951. United States imports for consumption, by principal sources, specified years 1937 to 1951, and January-February 1952, are shown in table 4.

TABLE 4.—*Wool tops: United States imports for consumption, by principal sources, specified years 1937 to 1951 and January–February 1952*

Country	1937	1943	1947	1948	1949	1950 [1]	1951 [1]	January–February 1952 [1]
	Quantity (1,000 pounds)							
Argentina		24		137	206	1,590	3,791	477
Uruguay				27	230	1,076	3,772	1,658
France	183		11	742	135	58	1,398	145
Belgium and Luxemburg				1,215	137	12	586	16
Australia		(2)	68	754	290	321	252	55
Union of South Africa				164	246	7	201	46
United Kingdom	64	111	34	302	386	635	195	155
All other		[3] 86	[3] 151	[4] 593	[5] 565	[6] 506	204	70
Total	247	221	264	3,934	2,195	4,205	10,399	2,622
	Foreign value (1,000 dollars)							
Argentina		9		192	324	1,808	8,848	1,208
Uruguay				35	173	1,082	9,574	2,602
France	121		14	1,085	213	89	3,224	466
Belgium and Luxemburg				1,765	209	14	1,185	23
Australia		(7)	65	1,169	485	416	409	131
Union of South Africa				215	383	8	348	62
United Kingdom	92	75	28	451	408	824	411	526
All other		[3] 71	[3] 176	[4] 770	[5] 829	[6] 763	386	143
Total	213	155	283	5,682	3,024	5,004	24,385	5,161
	Unit value (per pound) [8]							
Argentina		$0.39		$1.40	$1.57	$1.14	$2.33	$2.53
Uruguay				1.30	.75	1.01	2.54	1.57
France	$0.66		$1.30	1.46	1.59	1.52	2.31	3.21
Belgium and Luxemburg				1.45	1.53	1.20	2.02	1.50
Australia		.48	.95	1.55	1.67	1.30	1.62	2.39
Union of South Africa				1.31	1.56	1.17	1.73	1.36
United Kingdom	1.42	.67	.82	1.50	1.06	1.30	2.11	3.38
All other		.82	1.17	1.30	1.47	1.51	1.89	2.05
Average	.86	.70	1.07	1.44	1.38	1.19	2.34	1.97

[1] Preliminary.
[2] Less than 500 pounds.
[3] Includes 86,000 pounds, valued at $71,000, in 1943, and 143,000 pounds, valued at $146,000, in 1947, from Canada.
[4] Includes 202,000 pounds, valued at $295,000, from Italy, and 156,000 pounds, valued at $132,000 from Canada.
[5] Includes 275,000 pounds, valued at $398,000, from Italy, and 213,000 pounds, valued at $309,000, from the Netherlands.
[6] Includes 213,000 pounds, valued at $267,000, from Italy, and 164,000 pounds, valued at $228,000, from the Netherlands.
[7] Less than $500.
[8] Calculated on the exact (i. e., unrounded) figures.

Source. Compiled from official statistics of the U. S. Department of Commerce.

In early 1951, the Argentine Government established price floors below which wool could not be sold in the home market or exported. Because these floors were substantially above world prices of wool, Argentine top manufacturers found that even with the preferential exchange rate their export prices tended to be higher than those of competing countries in the world market. As a consequence there have been relatively few shipments (general imports) of wool tops from Argentina to the United States since mid-1951, and imports for consumption since that time have been largely withdrawals from warehouse rather than direct entries.

Shipments from Uruguay, on the other hand, were nearly 50 percent larger in the last half of 1951 than in the first half. They entered at an average monthly rate of 411,000 pounds in the first 6 months and 613 000 pounds in the last 6 months of 1951; in January 1952, they were 802,000 pounds, and in February 1952, they were 444,000 pounds.

Table 5 shows United States general imports (direct entries plus entries into bonded warehouse) from Argentina and Uruguay, imports for consumption (direct entries plus withdrawals from bonded warehouse), and approximate quantity remaining in bonded warehouse, in 1950 and in specified periods, 1951–52.

TABLE 5.—*Wool tops: United States general imports, imports for consumption, and approximate quantity remaining in bonded customs warehouse, 1950 and in specified periods, 1951–52*

[Quantity in thousands of pounds]

Period	General imports	Imports for consumption	Approximate quantity remaining in warehouse
1950:[1]			
Argentina	2,659	1,590	1,069
Uruguay	1,319	1,076	243
All other	1,751	1,539	212
Total, all countries	5,729	4,205	1,524
January-June, 1951:[1]			
Argentina	3,744	2,579	2,234
Uruguay	2,466	985	1,724
All other	1,930	1,405	737
Total, all countries	8,140	4,969	4,695
July-December, 1951:[1]			
Argentina	202	1,213	1,223
Uruguay	3,681	2,786	2,619
All other	1,452	1,431	758
Total, all countries	5,335	5,430	4,600
1951:[1]			
Argentina	3,946	3,791	1,223
Uruguay	6,147	3,772	2,619
All other	3,332	2,836	758
Total, all countries	13,475	10,399	4,600
January, 1952:[1]			
Argentina	17	111	1,129
Uruguay	802	731	2,690
All other	194	88	864
Total, all countries	1,013	930	4,683
February, 1952:[1]			
Argentina	1	365	764
Uruguay	444	927	2,207
All other	145	399	610
Total, all countries	590	1,692	3,581

[1] Preliminary.

Source: Compiled from official statistics of the U. S. Department of Commerce.

PRICES

During the greater part of the past 2 years, South American tops have been purchased for the United States market at duty-paid prices from 15 cents to 60 cents per pound below the price of comparable tops combed in the United States, and frequently the prices of South American tops have been lower than the prices of comparable grades of South American wool. In this period the prices of wool and wool tops in the world market more than doubled and then in the spring of 1951 began a decline which by March 1952, carried prices below the pre-Korean level.

Before 1950 imports of wool tops from Argentina and Uruguay were relatively small and constituted a negligible portion of United States consumption. In the period of January 1950–March 1951, imports, although increasing, did not have a particularly disturbing effect on the price level of the domestic market because business was good and prices were rising. After the first quarter of 1951, however, imports continued to increase while prices and worsted sales steeply declined, and the comparatively low prices of the tops from South America had a decidedly weakening effect on the price structure of the United States tops market.

Table 6 gives price quotations for domestic 60s grade wool tops, landed duty-paid prices to the importer for actual purchases of relatively comparable grades of Uruguayan tops, and the price quotations for 58s–60s grade Uruguayan raw wool, specified periods, 1950–52. Argentine prices were comparable to those of Uruguay up to the spring of 1951; since then, because of high official minimum export prices in the face of a declining world market, quotations for Argentina wool and wool tops have been well above those of Uruguay.

TABLE 6.—*Comparison of prices of imported Uruguayan and United States wool tops, and Uruguayan wool, specified periods, 1950–52*

[In dollars per pound]

Date of foreign purchase for imported tops and midmonth quotations for domestic tops and imported wool	United States top, 60s [1]	Uruguayan top, 56s-60s, 60s-58s, or 60s (duty-paid) [2]	Uruguayan wool, 58s-60s, clean basis (duty-paid)	Date of foreign purchase for imported tops and midmonth quotations for domestic tops and imported wool	United States top, 60s [1]	Uruguayan top, 56s 60s, 60s-58s, or 60s (duty-paid) [2]	Uruguayan wool, 56s-60s, clean basis (duty-paid)
1950—January	1.82	----	1.40	1951—July	2.75	----	2.67
Feb. 6	1.82	1.57	1.40	Aug. 1		2.41	
March	1.82	----	1.43	Do		2.30	
April	1.87	----	1.50	Do	2.55	2.19	2.20
May	1.87	----	1.56	Do		2.03	
June	2.00	----	1.63	Aug. 7		1.98	
July	2.10	----	1.68	September	2.15	----	2.17
Aug. 16	2.35	1.83	1.79	Oct. 2		1.61	
September	2.85	----	2.15	Oct. 2	2.20	1.56	2.00
Oct. 23	2.80	2.47	2.15	Oct. 25		1.77	
Nov. 29	2.85	2.30	2.19	November	2.25	----	2.00
Dec. 1	3.20	2.53	2.58	Dec. 4		1.56	
Dec. 20		3.94		Dec. 11	2.18	1.82	1.83
1951—Jan. 4	3.95	4.34	3.35	Dec. 20		1.82	
Do		4.61		Dec. 24		1.77	
February	4.25	----	3.35	1952—Jan. 15	2.10	1.66	1.70
March	4.50	----	4.03	Jan. 31		1.66	
April	4.50	----	3.67	February	2.07	----	1.57
May	3.70	----	3.00	March	1.77	[3] 1.45	1.47
June	3.10	----	3.00	April	1.67	----	1.46

[1] Made from domestic and/or imported wool.
[2] The 58s–60s and the 60s–58s sell for somewhat less than the 60s, but the difference is not large enough to distort the comparison.
[3] Offering price.

Source: Data for domestic top are mid-month quotations from the Commercial Bulletin; data for imported top are actual transactions, and for imported wool are from U. S. Department of Agriculture, Boston Wool Market News Service.

ARGENTINA WOOL TEXTILE INDUSTRY

Argentina's wool textile industry more than doubled its output during and following World War II, becoming largely self-sufficient, and in the case of wool tops shifting to an export basis. The Argentine industry now uses almost all of the Argentine wools of 64s and finer, amounting to about 30 million pounds annually, clean basis. In addition, it uses perhaps a third, or about 30 million pounds, clean basis, of the production of wools finer than 56s but not finer than 64s. Argentine wool exports consist of that portion of the medium wools between 56s and 64s which are not used domestically, and of the wools coarser than 56s, relatively little of which are used in Argentina. Most of the Argentine exports of wool tops have been of the grades between 56s and 64s.

In Argentina, in contrast to the United States and European industries, there are few, if any, companies engaged exclusively in making wool tops. Production of tops in Argentina is largely by so-called integrated mills which perform all of the processes in converting raw wool to worsted cloth. The production of tops for export is done largely by these mills which run their combing machinery extra shifts for that purpose. The tops are produced primarily on French combs, and generally have been of a quality nearly as good as comparable grades of United States tops.

During most of the years 1946–49, Argentina exported small quantities of wool tops, but in 1950 and in early 1951, following establishment of the 50 percent higher preferential exchange rate for wool tops as compared to wool, exports moved in large volume. In the spring of 1951, when world wool and top prices began a sharp decline, the Argentine Government established price floors below which wool could not be sold in the home market or exported. These floors were above the world prices and as a consequence there has been relatively little combing wool or wool tops exported from Argentina since May 1951. In January 1952, the Argentine price of scoured combing wool was about 30 percent above the world market.

Because of the large profits made on the sale of the 1950 clip Argentine wool growers have been in a position to hold their current clip off the market in the hope of rising prices. A price increase has failed to materialize, however, and there is mounting pressure for the Government to take action to permit the normal movement of Argentine wool exports. As of April 1952 market reports indicate that although the Government appears to be relaxing its minimum price regulations it has made no change in the preferential exchange treatment of wools tops.

FOREIGN EXCHANGE SYSTEM OF ARGENTINA

The system of exchange control established in 1931, in which the Argentine Government now sets different values for foreign currencies according to the nature of the product bought and sold, supplements customs duties and the export tax, and is used for similar revenues and protective purposes.

Since the simplification of the multiple exchange rate system, effective August 29, 1950, there have been three official rates of exchange for the Argentine peso, namely, the basic rate of 5 pesos to the dollar, the preferential rate of 7.5 pesos to the dollar, and the "free" rate of about 14.4 pesos to the dollar. Other foreign currencies are quoted in pesos in proportion to their dollar exchange value in terms of three official rates. The "free" rate applies mainly to noncommercial financial transactions but also to certain favored exports and less-favored imports. The limits within which it is allowed to fluctuate are set by the Central Bank. In addition, dollars are sold on the curb, or black market, for up to 29 pesos per dollar.

Most of Argentina's exports of natural products, such as grains, meat, and wool, are negotiated at the basic rate of only 5 pesos to the dolar. Except for wool, these are handled exclusively by a Government monopoly, the Instituto Argentino de Promocion del Intercambio. In the case of meat (and at times in the past, also in the case of grains), subsidies are paid to the producers because the applicable rate of exchange, in terms of the prices fixed in bilateral trade agreements, or prevailing in world markets, does not adequately remunerate the producers.

The preferential rate of 7.5 pesos applies to about 15 percent of Argentine exports, including canned meats, quebracho extract, wool tops, and other processed products. The "free" rate of about 14.4 applies to only a few products, chiefly pears and grapes. In February 1952 the Central Bank introduced a mixed rate for exports of casein, butter, and cheese by permitting 60 percent of ex-

change proceeds to be sold at the 7.5 rate and the remaining 40 percent at the free market rate, giving an effective rate of about 10.3 pesos per dollar.

The greater portion of exchange earnings is sold to importers at 7.5 pesos per dollar for commodities essential to the functioning of the economy. However, fuels, unavailable in Argentina, which amount to roughly 10 percent of total imports, enjoy the rate of 5 pesos per dollar. Manufactured goods competitive with local industry, when admitted, usually have to be imported either at the "free" rate or "without use of exchange," ostensibly as a capital contribution or with funds privately held abroad but apparently at times (though illegally) with exchange acquired at the curb rate. The arrangement of giving the lowest rates to exports of basic agricultural products and of providing higher rates for both exports and imports of manufactured products tends to promote manufacturing enterprises at the expense of basic agricultural products.

Because the bulk of exports are paid for at the rate of 5 pesos to the dollar, while most imports require payment of 7.5 or more pesos per dollar, the Central Bank realizes a net profit on exchange transactions. In 1949, exchange profits amounted to about 16 percent of the budgeted Federal revenue of Argentina while import duties and port dues constituted about 15 percent of the total. In addition the Government derives substantial revenue from an 8-percent ad valorem export tax which is levied on all exports except dairy products and fruits.

Imports, with negligible exceptions, are subject to a licensing system of obligatory exchange permits. Delivery of export exchange proceeds to the banking system is compulsory and exports are also subject to licensing. Thus the Government guides foreign trade as far as possible into channels where Argentina can spend its surpluses of certain foreign currencies and conserve its short supply of others.

The Argentine authorities try to prevent exports to soft-currency countries for reexport to hard-currency countries, because in such transactions, even though a higher peso price may be received by the Argentine exporter, the eventual hard-currency proceeds are acquired by the country from which the goods are reexported, rather than by Argentina. For example, when it was discovered recently that certain wool shipments consigned to Sweden were being reexported to the United States, the Argentine Government refused to issue any more export permits for such shipments.

The existence of different exchange rates affects the price relationships as between commodities within Argentina as well as the external prices at which Argentine goods are exported. It is sometimes inexpedient for the Argentine Government to permit a downward revision of internal prices as external prices fall, as in the present case of wool. The reason is that the banking system has made extensive loans to producers, secured by the wool clip at a high peso value. There is, accordingly, a strong demand for a more favorable exchange rate on exports of wool rather than a reduction of the internal price, but the Argentine Government has so far not yielded to this pressure.

The Argentine authorities have sometimes maintained minimum prices on exports of basic commodities by refraining from issuing licenses to export the goods at a lower price. The recent policy with regard to wool is an example of this tactic. With the decline of world wool prices after a period of extraordinarily high prices induced by the Korean war, the Argentine policy has been to hold stocks of wool for a return to higher prices, and to refuse export permits until and unless the desired prices are offered. The prevailing high prices paid by Argentine woolen mills and the credit policy which enables wool producers to await a more favorable export market, have strengthened this maneuver.

Exports of wool have always received the lowest or basic exchange rate except for the period from October 1949 to August 1950, when the basic rate remained unchanged but wool was given a 30.5-percent preferential rate, equivalent to the ratio by which the pound was devalued by the southern Dominion wool-exporting countries.

As shown in table 7, the exchange rate applicable to wool tops was the same as that on wool until January 30, 1948, when because of a lull in exports from Argentina a preferential rate was applied to this product. Thereafter, exports of wool tops enjoyed a preference of 18 percent over exports of wool. With the devaluation of the peso with respect to wool in October 1949, approximately the same degree of preference to wool tops over wool was maintained. However, in the simplification and devaluation of August 29, 1950, wool tops received a 50-percent preference over wool. The incidence of the exchange preference for wool tops has been slightly offset by the 8-percent ad valorem export tax which adds more to the cost of exporting wool tops than wool.

TABLE 7.—*Argentine exchange rates applicable to exports of wool and wool tops, compared with basic official "free," and curb rates*

[In pesos per dollar]

Date	Rate applicable to exports of—		Basic rate	Official "free" rate	Curb rate
	Wool	Wool tops			
Before Jan. 30, 1948	3.36	3.36	[1] 3.36	[2] 4.08	[2] 4.80
Jan. 30, 1948	3.36	3.98	3.36	[2] 4.45	[2] 9.25
Oct 1, 1949	4.83	5.73	3.36	9.02	13 50
Aug. 29, 1950	5.00	7.50	5.00	14.25	17.25
Feb. 1952	5.00	7.50	5.00	14.01	27.40

[1] Since 1940.
[2] Average, 1947.
[3] Average, 1948.

Source: Compiled by U. S Tariff Commission from U. S. Foreign Service reports and statistics of the International Monetary Fund.

Analogous products.—The preferential export rate (7.50) is applied to a large number of minor products, agricultural, mineral, and manufactured. However, the most important group of products thus favored consists of prepared and canned meats and certain meat byproducts, produced by branches of American and British firms for export mainly to the United States and the United Kingdom.[1] Linseed oil, cake, and meal enjoyed preferential treatment for a time in 1948–50, but on August 29, 1950, they were returned to the basic rate, the same as applies to flaxseed. These flaxseed products are exported through the Government export monopoly, the Instituto Argentino de Promoción del Intercambio, chiefly on the basis of bilateral contracts with Argentina's trading partners; accordingly, internal prices can be regulated without resort to a preferential exchange rate.[2] Flour, on the other hand, is exported at the basic rate the same as wheat.

URUGUAYAN WOOL TEXTILE INDUSTRY

Though the total production of wool in Uruguay is less than half that of Argentina, the production of wools finer that 56's, the grades preferred for worsted apparel, is about as great as in Argentina. The Uruguayan wool textile industry uses 10 to 15 million pounds annually, clean basis, for domestic consumption and, in 1951, probably used about 10 to 12 million pounds, clean basis, in the production of tops for export. There are eight combing plants in Uruguay, largely equipped with French-type combs, and most of these plants are operated by concerns also engaged in the production of yarn and cloth. In the past 2 years combing capacity for export has been substantially increased, and the largest combing plant is reported to be producing for export exclusively. Present combing capacity is estimated to be between 30 and 40 million pounds annually, of which two-thirds or more could be exported.

Exports of tops were small until 1949, when, under benefit of a highly preferential exchange rate, they exceeded 1 million pounds. In 1950 they increased to over 5 millio pounds, nearly doubled in 1951, and, judging from official export sales registrations, probably will approximate 8 to 10 million pounds in the first half of 1952. The Uruguayan tops exported during the past year have generally been of good quality and have been largely of the grades between 56's and 64's.

In contrast to Argentina, the Uruguayan Government placed no minimum price restrictions on the sale of wool following the price break in the first quarter of 1951, hence Uruguayan wool prices went down with world prices and Uruguayan top producers were able to obtain full advantage of the preferential exchange treatment accorded their product.

On April 5, 1952, the Uruguayan Government suspended sales of wool tops for export. It is believed that this action indicates a possible adjustment of the exchange differential between raw wool and tops.

[1] The United States excludes fresh meat from Argentina and Uruguay under quarantine regulations.
[2] In May 1948, the United States discontinued issuance of import permits for either flaxseed or linseed oil.

FOREIGN-EXCHANGE SYSTEM OF URUGUAY

The exchange-control system of Uruguay is similar to that of neighboring Argentina in its historical development, purposes, and effects. It was introduced in 1931 when all exchange operations were placed under the control of the Bank of the Republic. From 1934 to September 1949 three rates were in effect. The kinds of transactions to which they were applicable varied from time to time, but after 1937 the general pattern consisted of one rate for basic exports, a higher one for essential imports, and a still higher free rate for other permitted transactions. The free rate was, and remains, subject to stabilization by the Bank of the Republic by means of its intervention in the buying and selling of foreign exchange.

After the United Kingdom and Argentina had devalued their currencies, Uruguay, in October 1949, rearranged its system of exchange control by introducing additional special rates for both exports and imports of favored commodities and limiting the free rate to noncommercial transactions. No further modification of exchange rates has been made since that time. The basic rate was not altered at the time of sterling devaluation, and exportation of primary products such as wool, meat, and grains was continued at the basic rate. However, from time to time Uruguay has shifted some minor exports from one buying-rate category to another—apparently in relation to changes in the world market or to an aggravated accumulation of stocks.

As shown in table 8, wool has remained at all times subject to the basic rate of 1.519 pesos to the dollar. When Uruguayan combing mills, in 1947, first found themselves in a position to export tops, they were granted a special rate of 1.78, later increased to 1.88 pesos, representing an advantage of 17 and 24 percent, respectively, over the basic rate. The granting of these higher rates for wool top was subject to approval of individual applications for each transaction. The applicable rate for wool tops was increased to 2.35 pesos in October 1949 and remained at that figure until April 1952, when issuance of export permits for wool tops was temporarily suspended in order to permit a study of the equitableness of the rate, which is 55 percent higher than the basic rate, though still somewhat below the free rate, quoted in February 1952 at 2.59 pesos to the dollar.

TABLE 8.—*Uruguayan exchange rates applicable to exports of wool and wool tops, compared with basic and free rates*

[In pesos per dollar]

Date	Rate applicable to exports of—		Basic rate	Free rate
	Wool	Wool tops		
Before Sept. 25, 1947	1.519	[1] 1.519	1.519	[2] 1.90
Sept. 25, 1947	1.519	[3] 1.780	1.519	1.90
September 1949	1.519	[4] 1.880	1.519	2.77
Oct. 5, 1949	1.519	2.350	1.519	2.85
February 1952	1.519	2.350	1.519	2.59

[1] Exceptions could be made to favor manufacturers upon individual application. However, Uruguay's capacity to export wool tops before 1947 was negligible.
[2] From 1942.
[3] Individual application required to receive this rate.
[4] Introduced after September 1947 and effective for all exports of wool top in September 1949 (last month before sterling devaluation).

Source: Compiled by U. S. Tariff Commission from U. S. Foreign Service reports and statistics of the International Monetary Fund.

Analogous products.—The concession by Uruguay of preferential exchange rates to wool tops has a parallel in the case of linseed oil and byproducts, and canned meats, all manufactures of basic products of the country, the exports of which were negotiated at the basic rate. Linseed oil, cake, and meal have usually benefited by the intermediate rate (1.78). In addition, an export subsidy on a weight basis was paid after the partial devaluation of the peso in October 1949. Canned meats are exported at the most favorable commercial rate (2.35 pesos to the dollar). These are produced mainly by branches of American and British firms for export to the United States and the United

Kingdom.[1] Fresh and frozen meat, though subject to the basic rate, required a direct subsidy payment, after sterling devaluation in October 1949, in order to enable Uruguay to continue exports to the United Kingdom at the prices specified in the contract with that country.

Like Argentina, Uruguay exports flour at the basic rate, the same as applies to wheat.

POSSIBILITY OF AN INCREASE IN IMPORTS OF WOOL TOPS FROM FRANCE

The French Government, in February 1952, took measures to stimulate the export of manufactured goods. One measure, consisting of two decrees, provided for a rebate of certain production charges and taxes when goods are exported. The rebate reportedly approximates 14 percent of the cost of production.[2] Since the issuance of these decrees, which are applicable to wool tops as well as to other manufactured articles, there have been offerings of substantial quantities of French tops in the United States at prices comparable to those of Uruguayan tops and substantially below those of domestic tops. Most of the French tops are made from Australian wool, which is generally superior to South American wools.

The production of wool tops in France, which is greater than the combined production of Argentina and Uruguay, decreased 28 percent in 1951 as compared with 1950, from 165 million pounds to 119 million pounds, and exports also decreased 28 percent, from 32 to 23 million pounds. The decrease in production and exports was general throughout the textile industry, and was largely responsible for the Government's decision to stimulate exports.

EFFECTS OF INCREASED IMPORTS OF SOUTH AMERICAN TOPS ON DOMESTIC TOP MARKET

The increased imports of South American wool tops, at prices usually substantially below those of domestic tops of comparable grades, have had a particularly depressing effect on the United States market because they came at a time when the demand for tops was markedly declining due to a prolonged slump in the worsted trade. Government purchases have been comparatively small over the past year, and civilian demand has favored woolens rather than worsteds.

Sales of domestic tops have been very slow during the first quarter of 1952 because many buyers, noting a steady decline in prices over the past several months, have stayed out of the market in anticipation of further declines. Other buyers, in a natural effort to procure their needs at as low a cost as possible, have used the lower quotations on South American tops as a basis for determining what they will pay, and domestic top producers have found themselves unable to meet such prices without substantially undercutting their cost plus normal mark-up. In some cases the price of the South American tops has been under the domestic producers' cost of production for comparable grades.

Several top dealers in the United States, whose normal function consists of buying wool and combing it on their own machinery or having it combed on commission, have purchased large quantities of South American tops because its duty-paid price has been low enough to afford them a profit without the necessity of performing the processing operations. Some of the large worsted manufacturing concerns in the United States, which have considerable combing machinery of their own, have also found it expedient to buy substantial quantities of South American tops.

The price advantage of the wool tops from South America results from the application of preferential exchange rates, and so long as these rates remain unchanged the tops will find a ready market in the United States. Domestic tops are preferred in this market, however, and if the worsted business should experience a material upturn, the adverse effects of the lower-priced South American tops would be less.

Senator O'MAHONEY. Let me briefly quote one or two of the facts which appear in this report of the Tariff Commission. First, the domestic production of wool tops in 1952 was about 11½ million pounds less than it was in January 1951.

[1] The United States excludes fresh meat from Uruguay and Argentina under quarantine regulations.

[2] Foreign Service dispatch No. 2633, dated April 4, 1952, from the American Embassy, Paris, France.

The CHAIRMAN. That is our production?

Senator O'MAHONEY. Our production. It was cut down 11½ million pounds.

The CHAIRMAN. Yes.

Senator O'MAHONEY. Now, while that was going on, the importation of wool tops from South America was increasing very rapidly. In 1950 from Argentina, 2,659,000 pounds of wool tops; from Uruguay, 1,319,000. From January to June 1951, Argentina sent in 3,744,000; Uruguay, 2,466,000. Between July and December 1951, Argentina sent in 202,000 pounds; Uruguay, 3,681,000.

In the whole of 1951, the total importation from Argentina and Uruguay combined was over 7,563,000 pounds of wool tops, and during this time the preferential duty or the preferential rate of exchange was allowed, so that on the factual basis, there can be no doubt whatever that the result of the preferential exchange was to provide a bounty to the manufacturers of wool tops in South America.

Let me read this from the Tariff Commission report:

> Argentina's wool-textile industry more than doubled its output during and following World War II, becoming largely self-sufficient, and in the case of wool tops shifting to an export basis. The Argentine industry now uses almost all of the Argentine wools of 64s and finer, amounting to about 30,000,000 pounds annually, clean basis. In addition, it uses perhaps a third or about 30,000,000 pounds, clean basis, of the production of wools finer than 56s but not finer than 64s. Argentine wool exports consist of that portion of the medium wools between 56s and 64s which are not used domestically, and of the wools coarser than 56s, relatively little of which are used in Argentina. Most of the Argentine exports of wool tops have been of the grades between 56s and 64s.
>
> In Argentina, in contrast to the United States and European industries, there are few, if any, companies engaged exclusively in making wool tops. Production of tops in Argentina is largely by so-called integrated mills which perform all of the processes in converting raw wool to worsted cloth. The production of tops for export is done largely by these mills which run their combing machinery extra shifts for that purpose. The tops are produced primarily on French combs, and generally have been of a quality nearly as good as comparable grades of United States tops.
>
> During most of the years 1946 through 1949 Argentina exported small quantities of wool tops, but in 1950 and in early 1951, following establishment of the 50-percent higher preferential exchange rate for wool tops as compared to wool, exports moved in large volume. In the spring of 1951, when world wool and the top prices began a sharp decline, the Argentine Government established price floors below which wool could not be sold in the home market or exported. These floors were above the world prices, and as a consequence there has been relatively little combing wool or wool tops exported from Argentina since May 1951.

Of course, that was stimulated later on by this preferential rate of exchange.

Now, before you in this bill as it came from the House there is a sentence which is clearly designed to give a Secretary of the Treasury discretionary power. This is on page 3 of the bill before you, beginning with line 2:

> Such countervailing duty shall be imposed only if the Secretary of the Treasury shall determine, after such investigation as he deems necessary—

You see, there is a limitation.

The CHAIRMAN. Yes.

Senator O'MAHONEY. This changes the whole concept of the law:

> as he deems necessary, that an industry in the United States is being or is likely to be injured, or is prevented or retarded from being established, by reason of the importation into the United States of articles or merchandise of the class or kind in respect of which the bounty or grant is paid or bestowed.

The next sentence is:

The exemption of any exported article or merchandise from a duty or tax imposed on like articles or merchandise when destined for consumption in the country or origin or exportation, or the refunding of such a duty or tax, shall not be deemed to constitute a payment or bestowal of a bounty or grant within the meaning of this section.

Now, that is another attempt by law to reverse the present rule. I have not had the opportunity to examine all of the cases, but I have been given to understand, and I understand, that the courts have, without variation, held that such an exemption or such a refunding is a bounty or a grant. So here we have an explicit request to reverse that rule.

Mr. Chairman, it seems to me that since and if America is going to carry the burden which it has assumed and which has been thrust upon us it must remain economically sound. We should be very, very slow to permit the plain law of Congress, designed to support American industry, to be weakened by inaction on the part of an executive branch of the Government or to be weakened by changes of the law which grant discretionary authority.

There are two ways in which this thing can be corrected. One of them is the method which is suggested in the bill that Senator Mundt has introduced, which is S. 2668. The committee will decide what is the proper method to follow.

Under this bill, section 303 of the Tariff Act is amended by adding a sentence reading as follows:

The extension to the exports of any merchandise in a processed or partially processed form of a more favorable rate of exchange than is extended to exporters of such merchandise in a raw or unprocessed form shall be deemed to constitute a payment or bestowal of a bounty or grant in respect of such merchandise in processed or partially processed form within the meaning of this section.

Now, that, of course, is clearly logical. If any country exporting any commodity into the United States grants a preferential rate of exchange on the processed form of that commodity as compared with the raw form, it is clearly a subsidy, a bounty or a grant. It is a device intended to stimulate the processing of the commodity.

Now, the other way which could be followed would be to strike the whole section from the bill; that is to say, strike all of section 2 (c), and that method could be supported by the argument that since section 303 is clear as it now stands, and does clearly and explicitly require the imposition of a countervailing duty when a bounty or grant is made by the exporting country, and since it is easily ascertainable when such a multiple rate of exchange operates as a bounty, it is not necessary to change the law. The law as it now stands requires the Treasury Department to impose the countervailing duty.

The CHAIRMAN. I think that was the original intent and purpose. I remember having something to do with the Tariff Act of 1930. We were here and spent the entire summer here, and I remember definitely this particular point. It was intended to do that.

Senator O'MAHONEY. I do not know how language could have been more clear, Senator.

The CHAIRMAN. Well, I am advised here by the expert that the Treasury contends that 7½ pesos is nearer the true value than the 5 pesos per dollar on raw wool.

Senator O'MAHONEY. That is obviously attempting to judge the propriety of the action of another government. It is none of our

business what the other government does. Why should we say that the rate is——

The CHAIRMAN. Well, they probably follow that up with the contention that they are, therefore, imposing a tax of about two and a half pesos on the raw.

Senator O'MAHONEY. Yes, of course, that is their contention.

The CHAIRMAN. Yes.

Senator O'MAHONEY. But where you have the preferential rate granted to a particular commodity, and you find, as a result of that rate, a marked increase of the exportation of the preferred commodity into the United States and, at the same time, you find the production of that competing commodity in the United States cut almost in half, you know that American industry is being penalized because of reasons which may be very persuasive when you look at it from the point of view of the International Monetary Fund. But those reasons to me are rendered nugatory when we realize that we cannot afford to undermine the capacity of American industry to pay the costs of the enterprise in which we are engaged.

The CHAIRMAN. Undoubtedly the effect of this multiple exchange rate is to give the advantage or to express it in other terms, bounty, while it is not technically a bounty, it undoubtedly has the effect of giving the preference and advantage to the exporter from, say, Argentina or any other country where that multiple rate is fixed.

Senator O'MAHONEY. That is right. I do not think there is any doubt about it, and I do not think it is our business to attempt to weigh the motives or the purposes or the bad judgment, perhaps, of any other government which may do this, but once we allow this matter to hang in abeyance, once we say, "Well, the language of our law is clear but we are not going to enforce it," then we are going to invite similar action by other countries.

The information which comes to me now indicates that French wool tops will be coming into this country. In this report of the Tariff Commission I find this very interesting fact reported. Argentina, when it found that its wool exports were going into Sweden and, because of the preferential rate of exchange, were reexported by Sweden into the United States—Sweden reexported them because the preferential rate of exchange was so great that Sweden could make dollars, because it was a soft currency country, could make dollars in the United States by taking advantage of that.

Well, immediately that Argentina discovered it, it stopped the exportation to Sweden. In other words, the plan is to get into the market of the United States in order to get American dollars, and when countries are doing that, are necessarily weakening our own economy, I think it is incumbent upon us to do everything we can to protect our own economy from such undermining when the law is clear.

The CHAIRMAN. The Treasury has taken a pretty wide excursion to try to arrive at the true value of these foreign currencies, particularly in the case of the franc at this moment. It could be awfully hard—the fluctuation is so great—almost from day to day, there is a fluctuation, as a matter of fact.

Senator O'MAHONEY. Why, certainly, what may be the true value today may be utterly different from it tomorrow; and I think our own safety is obtained by clinging to our own standards.

The CHAIRMAN. Well, thank you very much, Senator.
(The letter previously referred to is as follows:)

For release Wednesday, February 27, 1952.

O'MAHONEY AND COLLEAGUES URGE TREASURY TO EXERCISE TARIFF POWER TO PREVENT ARGENTINE DUMPING OF WOOL TOPS

Senator Joseph C. O'Mahoney (Democrat, Wyoming) today issued the following statement:

"At a conference on February 9 of Senators and Members of the House of Representatives representing States interested in the wool industry, there was authorized the preparation of a letter to the Treasury Department urging the imposition of countervailing duties on wool tops exported into the United States by Argentina and Uruguay. These countervailing duties are authorized by section 303 of the Tariff Act of 1930 whenever any exporting company, directly or indirectly, provides a grant or bounty to stimulate increased exportation. In conformity with this agreement, the enclosed letter has been dispatched to Assistant Secretary Graham from whom I had previously received a letter dated February 15. Copies of the two letters are attached."

FEBRUARY 21, 1952.

Hon. JOHN S. GRAHAM,
Assistant Secretary of the Treasury,
Washington, D. C.

DEAR MR. GRAHAM: I am most appreciative of your letter of February 15 in response to my telephone request of February 13 for information with respect to the enforcement of section 303 of the Tariff Act as the result of the exchange preference which is now being given by the Governments of Argentina and Uruguay to stimulate the manufacture of wool tops in those respective countries for export to the United States. I note with pleasure that the Department has already taken steps to obtain from the United States Embassy in Argentina "some of the information which is required for an adequate reexamination of this problem."

On Friday last, February 15, a conference was held of Representatives and Senators from States in which the wool industry in one or more of its aspects, is of great importance to the maintenance of a sound economy, to consider this and other matters which are now adversely affecting the production and manufacture of domestic wool and wool products. I advised those present of the information I had received by telephone from your office and I have since distributed copies of your letter to all who participated.

The members present were unanimously of the opinion that the present law imposes an obligation upon the Secretary of the Treasury to levy countervailing duties whenever a bounty or grant upon the export of dutiable commodities is made by any country exporting such commodities to the United States. In your letter of February 15 you say that it is one of the responsibilities of the Secretary to "determine whether a bounty or grant is in fact being conferred upon any product." May I not suggest that the language of section 303 of the Tariff Act seems to answer this question most explicitly. It would be difficult indeed to frame language less open to misconstruction of a misinterpretation than that which is used in this section.

The obligation of the Secretary of the Treasury to impose a countervailing duty clearly arises "Whenever any country * * * shall pay or bestow, directly or indirectly, any bounty or grant, etc." The use of the words "pay or bestow" in the alternative and the words "directly or indirectly" to modify the words "any bounty or grant" could be designed only to show that Congress wanted to prevent any country from avoiding any tariff rate imposed by our law by an device or method.

That it was not the intention of Congress to allow the Secretary discretionary power to determine whether or not a device which has the effect of granting a proferential position to any exporter from another country is a "bounty or grant," seems to be proven, not only by the fact that section 303 provides for a mandatory countervailing duty, but by the fact that in the clause

imposing the additional duty, the section describes it as being "equal to the net amount of such bounty or grant, however the same may be paid or bestowed."

This phrase "however the same be paid or bestowed" removes any possible ambiguity and imposes upon the Secretary an obligation which he may not avoid by construing preferential treatment through multiple export rates as a technique of deriving tax revenue, of avoiding political and other difficulties in the devaluation of their currencies or of producing other economic effects within the countries. The only question is whether the method used accords preferential treatment by which the American duty is avoided. No matter how the preference is paid or bestowed, and no matter what internal effect it may have, if the method used grants an advantage to an exported commodity, then the countervailing duty must be imposed.

That Congress had no intention to give the Treasury Department any discretion in the matter is evidenced by the language used in section 303 of the Tariff Act of 1930 prescribing the action to be taken when such bounty or grant is paid or bestowed. This sentence reads:

"The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and for the assessment of such additional duties.
duties."

It is difficult to see how language can be made more explicit. The countervailing duty comes into effect by the mandatory provision of the law whenever a bounty or grant is paid or bestowed, directly or indirectly, "however the same be paid or bestowed." The duty of the Secretary is also clearly prescribed. He shall ascertain and determine and he shall declare the net amount and he shall make all regulations he may deem necessary for the identification of such articles and for the assessment of such additional duties.

If a multiple export rate has the effect prescribed in the law, even though it may have other economic effects, no discretion is given by the law to the Secretary to vary the effect Congress sought to produce.

In the instant case the bounty is granted by the Argentine Government to exporters of wool tops at an export rate of exchange of 7½ pesos per United States dollar. Wool receives an export rate of only 5 pesos per dollar. The result is that the favored Argentine manufacturers of wool tops are enable to export to this country the manufactured wool product at the same price as the Argentine wool from which the tops are made. The evidence before our conference was to the effect that South American tops are underselling tops made in the United States by 38¼ cents per pound.

I trust that when the additional information is received which you have requested from the United States Embassy in Argentina you will arrange a conference with the undersigned, all of whom are of the opinion that the circumstances in the instant case require the imposition of a countervailing duty and that the only responsibility of the Secretary is to "determine, or estimate, the net amount of the bounty or grant, however the same be paid or bestowed" and levy a countervailing duty accordingly.

Sincerely yours,

LESTER C. HUNT.
MILTON R. YOUNG.
GEORGE D. AIKEN.
WILLIAM LANGER.
FRED A. SEATON.
MIKE MANSFIELD.
WALTER K. GRANGER.
WESLEY A. D'EWART.
ZALES N. ECTON.
GUY CORDON.
ERNEST W. MCFARLAND.
CARL HAYDEN.
O. C. FISHER.
JOSEPH C. O'MAHONEY.
WAYNE MORSE.
JAMES E. MURRAY.
TOM CONNALLY.
WALLACE F. BENNETT.
ARTHUR V. WATKINS.
KARL E. MUNDT.
HENRY C. DWORSHAK.
ED. C. JOHNSON.
FRANCIS CASE.
E. Y. BERRY.
PAT MCCARRAN.

TREASURY DEPARTMENT,
ASSISTANT SECRETARY,
Washington, February 15, 1952.

Hon. JOSEPH C. O'MAHONEY,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR: Reference is made to your telephone request of February 13, 1952, for information regarding the status of this Department's consideration of the applicability of countervailing duties to imports of wool tops because of exchange rates made applicable to them by Argentina and Uruguay.

As you know, section 303 of the Tariff Act in substance places two responsibilities upon the Secretary of the Treasury. He must determine whether a bounty or grant is in fact being conferred upon any product and, if so, he must determine or estimate the net amount of each such bounty or grant and levy countervailing duties accordingly. These responsibilities often present a number of complex questions. The cases to which you refer are particularly difficult because they involve the problem of indirect bounties or grants which may result from the presence of multiple exchange practices.

In some cases multiple export rates may have economic effects similar to those of bounties, but in other instances they may not. For example, some countries apply lower export rates on some commodities than on others as a technique of deriving tax revenue from the exportation of the commodities subject to the lower rates. In some countries multiple rates may be resorted to as a means of avoiding the political and other difficulties involved in a devaluation of their currencies.

Therefore, the task of determining whether a particular rate is in fact as subsidy rate is obviously not an easy one nor is it a task which can usually be accomplished quickly. When the question of the exchange rates of Argentina and Uruguay was previously considered, the Department reached the conclusion in December 1950 that their application to the export of wool tops did not give rise to a bounty or grant within the meaning of section 303 of the Tariff Act of 1930. This Department is, however, again giving careful and active consideration to the specific cases to which you referred. Indeed, steps were taken some weeks ago to obtain directly from the United States Embassy in Argentina some of the information which is required for an adequate reexamination of this problem.

Very truly yours,

JOHN S. GRAHAM,
Assistant Secretary of the Treasury.

The CHAIRMAN. Mr. Beiter. You may have a seat, Mr. Beiter, and identify yourself for the record.

STATEMENT OF ALFRED F. BEITER, NATIONAL PRESIDENT, NATIONAL CUSTOMS SERVICE ASSOCIATION

Mr. BEITER. My name is Alfred F. Beiter, and I am president of the National Customs Service Association.

The CHAIRMAN. I beg your pardon for mispronouncing your name.

Mr. BEITER. That is all right, Senator.

Mr. Chairman, I represent the customs service employees. Our members consider themselves shareholders in the customs service. As career customs officers we have a strong interest in the improvement of customs administration. I use the word "career" advisedly since the personnel turn-over in our service is relatively small. A very large percentage of our members have had 20 years and more in the Government service. Customs is their life work, they are proud of it, and anxious to maintain its present high standard of perform-

ance and even improve on it. Our continuing interest in better administration of the tariff and related laws causes us to welcome and appreciate this opportunity to make this statement.

Generally speaking, we believe the proposed legislation will make for improved customs administration and eliminate many of the uncertainties and hardships which plague those doing business with customs. Our comments on the present bill are more limited than on the original measure presented in the House—H. R. 1535—since H. R. 5505 is a considerably improved bill.

We are in complete sympathy with the objectives of this legislation and our comment, therefore, is in the nature of friendly observations on selected portions of the bill which we feel will fall short of achieving the maximum improvement possible, or which will expedite handling or diminish the custom workload at the sacrifice of proper controls.

Section 13. Value: Subsection (A) amending section 402 (c) (1) Tariff Act of 1930, as amended, provides that in computing United States value on nonpurchased goods allowance shall be made for any commission paid or to be paid. Allowing deduction of the full commission without limitation would make it possible for foreign suppliers through the medium of owned or controlled subsidiaries in the United States, to land their merchandise in this country at substantially lower prices than other importers of competitive merchandise.[1] This could be added by a further proviso that the commission allowed shall in no case be greater than that which is usual in the market for merchandise of the same class or kind as that undergoing appraisement.

The same subsection amending section 402 (e) (2) outlining constructed value stipulates that the addition for general expenses and profit shall equal that usually added by producers in the producing country who export to the United States on their sales in the usual wholesale quantities and in the ordinary course of trade, of merchandise of the same class or kind as that undergoing appraisement.

Since one of the major objectives of the customs-simplification proposal has been to avoid as far as possible having customs valuation dependent on circumstances peculiar to foreign market sales, it is fair to assume that this addition for general expenses and profit is intended to be based on export sales to the United States. While it is quite probable that such would be the interpretation placed on the language, it might be advisable to specify that the addition for general expenses and profit is to be predicated on the export market to the United States. Heavier distribution costs, selling and advertising expenses, commonly require foreign sellers to make competitive consigned merchandise being appraised on United States value basis of some gross selling price, with importer A receiving a standard 10 percent

[1] This would be accomplished by paring the profit margin which normally remains in the dutiable value of the merchandise and paying the difference as added commission. Since the agent would be wholly owned by the manufacturer no appreciable loss would thereby result to the seller. As an illustration, assume his selling price to the point of driving A out of competition, or at least securing the lion's share of the available trade.

commission and importer B an inflated but actual commission of 40 percent, the computation would be approximately:

IMPORTER A	*Per unit*	IMPORTER B	*Per unit*
United States selling price	$10.00	United States selling price	$10.00
Less commission (10 percent)	1.00	Less commission (40 percent)	4.00
	9.00		6.00
Less freight and insurance	.60	Less freight and insurance	.60
	8.40		5.40
Less duty (40 percent, estimated)	2.40	Less duty (40 percent, estimated)	1.54
Dutiable value	6.00	Dutiable value	3.86

As an initial consequence, B would pay less duty than A, though commercially and saleswise the merchandise is approximately the same. The probability is also that B, using the advantage given him by this lower duty liability, would reduce substantially larger additions for general expenses and profits for home-trade sales than for export transactions.

Section 21. Customs supervision: It is our sober judgment that this provision in its present form should not be enacted. Its avowed purpose is to avoid the possibility that the courts may interpret tariff requirements for customs supervision as demanding direct and continuous supervision when the nature and purpose of the assignment would make that sort of supervision a wasteful employment of customs manpower. There can be no quarrel with such an objective, but section 21, in avoiding that danger, creates a far greater one. Proponents of this section will not deny the sweeping and all-embracing character of the language used. To protect importers who have acted in good faith requires no more than a provision that any action or thing done or maintained in good faith by an importer, or other person, under the supervision of customs officers, and in compliance with the principal customs officer concerned, may not thereafter be questioned administratively or otherwise.

It most certainly does not require that we abandon a standard for customs supervision and substitute therefor in many cases the day-to-day makeshifts of hard-pressed local customs officers.

Section 21 abandons principle and enthrones expediency. The true standard for customs supervision, implied but inflexible, is that it be of such a nature and extent as to effect the supervision intended within reasonable limits, dictated by the importance, revenuewise, or enforcementwise, of the task. The determination of what measure and kind of supervision, spot check, continuous observations, et cetera, is an administrative application of this general principle or standard to a specific control or enforcement problem.

Under section 21, in the many instances where there is no regulation of the Secretary prescribing the nature and extent of the supervision to be exercised, this specific local determination of what form the supervision should take becomes not the application of the standard but the standard itself; and it is evident, when local officers all over the country are making such determinations almost daily, there no longer is any real standard of supervision. Such a situation is obviously fraught with disagreeable consequences. But, quite apart

from its undesirability from a philosophical point of view, as a matter of system, it is especially dangerous in view of the current circumstances of the customs service.

In recent years, in almost all customs activities, there has been a pronounced weakening of controls. This has been due, we think, to two factors. The minor one has been a certain overenchantment in high administrative circles with theoretical rather than practical measures. The recent change in the draw-back regulations is a case in point.[2] But the major factor, and the one which has created a favorable climate for the other, has been the terrific squeeze on customs manpower. The steady rise in the customs workload on a static, ever-diminishing force has posed fearful problems for customs administration in the field and in the Bureau. Ofttimes, Customs does not have the personnel to perform the tasks imposed on it. Consequently, all sorts of short cuts and makeshift arrangements may be called into play to prevent a breakdown in customs operations. However, these makeshifts are now approached cautiously and reluctantly, with full appreciation of their shortcomings. But in the field of customs supervision, if section 21 is enacted, the make-do approach becomes the accepted norm.

Uneasiness in the employment of makeshifts will no longer be quite as prevalent, nor will continuing concern whether the supervision exercised is consonant with the importance of the assignment and adequate for reasonable effectiveness be quite so justified. The enactment of this section will tend to lessen the responsibility of field officers, and doing the best that can be done with the forces available at a given time will be a full discharge of duty, since there will no longer be an absolute standard geared to the importance and difficulty of the task. Local circumstances, though they vary from day to day, can conceivably govern. The effect is that the law sanctions a wide-open policy on those aspects of customs supervision which cannot be covered by department regulation.

The Customs Bureau is and has been, one of the preeminent agencies of the Federal Government. It has earned a reputation for technical competence, efficiency, and performance of a markedly high order. Much of this is due, of course, to the high type of personnel the Bureau has been able to attract and retain. But a large measure of its reputation is the fruit of basic customs concepts through the years which have, by and large, made customs decisions, rulings, determinations, et cetera, rest on facts rather than assumptions; first-hand information rather than documents; realities rather than probabilities. Section 21 contains the seeds of destruction of much of the effectiveness which has characterized the operations of the Customs Bureau, and we urge its rejection in its present form.

The CHAIRMAN. Any questions of the witness?

Thank you very much, Mr. Beiter, for your appearance here.

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[2] Simply stated, draw-back is the system whereby customs duties on imported merchandise may be refunded if the merchandise is used or consumed in the domestic manufacture of other merchandise subsequently exported from the United States.

Two elements are required to establish the right to the duty refund. The imported material must, in fact, be used or consumed (with a limited possibility for substitution) in the manufacture of the domestic merchandise; and this, in turn, must be exported from the United States. Great care is taken by Customs to verify the first element. Specially trained personnel verify formulas, check manufacturing methods, et cetera. Yet the coequal element of exportation, a fact much more readily established at first hand, may now be established by affidavit filed after the exportation is claimed to have taken place. And this is an operation paying out some $8,000,000 annually.

Your statement will be placed in the record.

You are speaking from the standpoint of the career people who administer, who handle, the customs problems?

Mr. BEITER. That is right, Senator; and we think this section is broad enough to permit the relaxation of all types of customs supervision.

The CHAIRMAN. Yes, sir. Well, thank you very much.

Mr. BEITER. Thank you, sir.

The CHAIRMAN. Mr. Armstrong, I believe you are to be called next. You may be seated, and you may identify yourself for the record.

STATEMENT OF IAN ARMSTRONG, ASSISTANT TO THE PRESIDENT, ELDORADO OIL WORKS

Mr. ARMSTRONG. I am Ian Armstrong, of the Eldorado Oil Works, San Francisco, representing the Eldorado Oil Works and also the National Institute of Oilseed Products.

The CHAIRMAN. Yes, sir. You may be seated.

Mr. ARMSTRONG. That is in San Francisco.

I have here a brief written statement which I can——

Senator KERR. Generally, what are the products?

Mr. ARMSTRONG. Oilseed products. It is largely vegetable oil-bearing products.

Senator KERR. Illustrate.

Mr. ARMSTRONG. Copra, soybeans, cottonseed.

Senator KERR. Yes; all right.

Mr. ARMSTRONG. Imported sesame seed, and things of that sort. They take oil out to make the oils, and the residue is in cattle food.

The CHAIRMAN. You have a written statement?

Mr. ARMSTRONG. I have a written statement which I would read briefly. It will not take long. It is more or less a condensation of our views on the situation, and gives you a broad picture of it; and, if any time is saved in my presentation, I would like it granted to Mr. John Gordon, who follows me, and who has a statement in greater detail with more precise figures than I have here.

The CHAIRMAN. Yes.

Mr. ARMSTRONG. If that is possible.

The CHAIRMAN. You may put your entire statement in the record if you wish to.

Mr. ARMSTRONG. Yes. Well, I would like to just get this off my chest.

Let me, first of all, explain that copra, which is what we are particularly interested in, is the dried meat of the coconut, which is produced all over the Orient. Owing to preference in taxation, the supplies for this country are mainly imported from the Philippine Islands.

Copra contains two-thirds coconut oil and one-third coconut meal. Copra traditionally is duty-free, but a tax of 3 cents per pound it at present paid by the first domestic processors of the oil——

Senator KERR. By what?

Mr. ARMSTRONG. The first domestic processor of the oil. It is a processing tax; that is, the soap maker or the refiner or whoever uses the oil, he pays that tax when he processes the crude oil which he gets from us.

Senator KERR. Tell me how you get the oil out of the coconut.

Mr. ARMSTRONG. Well, there are different methods, which is one reason for our objection. The old-fashioned method was to, what we call, scalp it through an expeller, which is an Archimedian screw, that takes out about half of the oil, and from that process they used to take hydraulic presses and squeeze it out. In recent years they have developed two improved systems. One is an improved expeller. The Archimedian screw I mentioned has been improved whereby in practically one process they can take all the oil out, except about 5 or 6 percent.

Then, there is the still further improved method of solvent process, which is what we use, in which you can take the oil down to 1 percent, so that you have these various methods of doing it, and that is one reason that we criticize section 22 of this bill in trying to arrive at what may be considered an appropriate equivalent in copra duty.

Now, this section 22 calls for the United States Tariff Commission to certify to the President the rate of import tax for copra which the Commission estimates would be reasonably equivalent to the oil content of copra.

This will be anything but simple. Copra contains a larger percentage of oil than any other oil-bearing material, and varies as much as 6 percent in oil content. That is a 10-percent variation of the normal oil content.

Senator FLANDERS. You pay the tax on the oil, not on the copra?

Mr. ARMSTRONG. The tax is on the oil. We do not pay anything at present. What they want to do is to make us pay the equivalent when we bring in the copra.

Senator FLANDERS. All right.

Mr. ARMSTRONG. I wish to submit independent testimony to this effect taken from the records of arrivals of Philippine copra on the Pacific coast by industrial chemists, Messrs. Curtis & Tompkins, which I shall submit here. Curtis & Tompkins are the recognized experts in this country on the analysis of copra and coconut oil.

Senator FLANDERS. May I make another remark: Where it says that "certified to the President the respective rate or rates of import tax," is there any difference between an import tax and a duty?

Mr. ARMSTRONG. There is a specious difference.

Senator KERR. Explain that to me.

Mr. ARMSTRONG. The point there is that when you have a tariff, an import tariff, it is the published tariff of the United States, and as such is what is negotiated when we sit in with GATT and other international organizations, and that is officially recognized, and is something that is only altered at specific intervals in this country when there is a tariff revision on. That is a tariff.

Now, we have understandings with different countries, particularly under GATT, on tariffs, and GATT has pointed out that, "While you fellows, yes, you have got your tariff all right, but you have also got these processing taxes which are, in effect, tariffs, but we want you to come out and take these processing taxes and make them what they really are, tariffs."

Well, we get around these things because we have a definite arrangement, for instance, with the Philippines, that we will not put any tariffs against them, but we will put an import tax against them. That is

why I say it is specious in calling it an import tax when actually it is a tariff.

Senator FLANDERS. Now we have gotten three terms here. We have gotten tariff, import tax, and a processing tax.

Mr. ARMSTRONG. Yes.

Senator FLANDERS. Is the import tax a half-way between a processing tax and a tariff?

Mr. ARMSTRONG. The import tax is a tariff by another name.

Senator FLANDERS. Are there other examples of import tax, or do we mostly go to processing tax?

Mr. ARMSTRONG. There is really no point in having what you might call a specific import tax.

Senator FLANDERS. This provides for it, though.

Mr. ARMSTRONG. This attempts to provide for it, but it actually is a tariff, so that the only thing I can figure is that they had a certain amount of decency in not calling it a tariff, because we have agreements definitely not to put on a tariff, but we can say it is an import tax.

Senator FLANDERS. You are making decency the equivalent of subterfuge.

Mr. ARMSTRONG. That is right; that is it.

Senator KERR. Was that a question or an accusation?

Senator FLANDERS. I will let it stand on the record as it reads for the judgment of posterity.

Senator KERR. I must say that posterity may have some great interest in it, but I was curious, and I am sorry that my curiosity was not gratified.

Mr. ARMSTRONG. I will proceed.

I have already mentioned the variation of 6 percent, which is equivalent to a 10-percent variation in the oil content of the copra itself. In addition to this there are different methods of extracting the oil. Some mills, namely those which use the solvent process, leave about 1 percent of oil in the byproduct meal, while others, who use the propeller process, leave as much as 5 to 6 percent of oil in the meal.

Between these two wide variables an average could be arrived at which could put out of business a mill which ordinarily leaves 5 to 6 percent of oil in the meal if they got a long run of low-oil-content copra.

Incidentally, the two leading oil-bearing materials in this country, cottonseed and soybeans, have a total oil content of only 16 percent.

Senator KERR. What is the oil content of peanut?

Mr. ARMSTRONG. Peanut is quite a bit higher. Peanut is up to around 30, 35 percent.

Senator KERR. Castor beans?

Mr. ARMSTRONG. Castor beans about 42 percent. Castor beans vary depending on what part of the world they come from. So you can readily see that with this variable of 6 percent in the oil content, in another, say, 5 percent in the extraction, it would be practically impossible for the Tariff Commission to reconcile these factors.

At present the tax is paid on the oil actually produced, and is paid by the processor at the time of processing. There seems to be no logical reason why this should be changed.

Section 22, therefore, would considerably complicate rather than simplify matters, and work a gross injustice on the oil-crushing mills in this country.

Section 22 also overlooks the cardinal fact that it transfers the payment of such taxes from several industries to one industry, thus placing a completely new tax on our oil-crushing business.

Unfortunately, there are less than 20 copra-crushing mills all together in this country who will have to bear this enormous tax, which is at present collected from more than a thousand contributors.

This section, therefore, if passed would hold these few mills responsible for the payment of about $18,000,000 annually.

Senator KERR. How much?

Mr. ARMSTRONG. $18 million. The precise figures are in John Gordon's statement when he follows. It was paid last year under the processing tax. It was over $18,000,000, whereas at present this tax is collected months later from the actual users of the oil.

It is true that the final purchaser would eventually pay this tax as at present, but this proposed section 22 not only would involve $6,000,000 additional working capital by these few mills, but would also penalize the final purchaser by his having to pay the tax about 45, 50 days earlier than he pays it under the present arrangements.

My firm alone, operating one mill on the Pacific coast and another on the Atlantic coast, uses about 7,000 tons of copra monthly at each plant. The proposed tax would work out roughly at about $42 a ton, just taking the average of those figures, so we would be called upon to pay over half a million dollars each month in the import tax—one concern. This is equivalent to over 30 percent of the cost of our raw material.

At present we pay nothing. The tax is collected later from the processors, and the burden, therefore, is broadly distributed, and there is no hardship at present.

Obviously, these facts were not taken into consideration by the authors of this section, as they specifically mention that "no change in the economic burden of the tax is intended." At present, the tax is paid approximately 3 to 4 months after the copra is imported, whereas this section calls for the payment at time of importation, which would be a crushing burden on a relatively few mills.

We can sympathize with the broad objective of GATT, the General Agreement on Tariffs and Trade, to smoke out these iniquitous processing taxes, and call them what they really are, import taxes or tariffs which, in most cases, were passed in the depression years of the early thirties, and which are completely out of step with our present economy. In other words, since the last war the United States has developed from a net import to a net export basis on oils and fats, and we have no longer any need for this protection.

As we read the terms of the GATT agreement, there is no obligation on the part of the United States to convert these processing taxes to duties and, in fact, we would put more credence in the provision of the Treasury Department analysis of H. R. 5505 that they "should be done away with as they discriminate in fact against imports."

The most convincing evidence of this is the fact that prewar approximately 90 percent of Philippine copra was shipped to this country.

This percentage has steadily declined year by year until in 1951 the percentage was down to 50 percent, and is getting worse monthly. This is, therefore, no time to place additional handicaps on a distressed industry.

We also believe that this section 22, imposing an import tax on copra, is in direct contravention of the Philippine Trade Act of 1946. Copra has been traditionally duty-free the world around, and is so bound in the trade agreements with Great Britain, and which automatically include all most favored nations. Placing an import tax on copra now would be flatly against the spirit of these agreements even under the subterfuge of calling it an import tax instead of a tariff which, in fact, it would be.

We submit that section 22 actually calls for additional work to be done by the United States customs, which heretofore has been done by the Internal Revenue Department and, therefore, could not be regarded as customs simplification.

At the time this bill was in the House, largely through ineptitude, no protest was made by us against this section. The points I have raised, therefore, were not considered by the House, and your honorable committee need not feel that by eliminating this section they would be overriding the House on something which they might otherwise have had a definite interest in.

To sum up, therefore, it will be seen that this Section 22 has been prepared without a full knowledge of the actual results, and is an injustice to our industry. There is no resulting advantage to anyone, and definitely it imposes a new tax on an industry which is already depressed and losing ground. It contemplates a tax on copra which is historically duty-free, thus abrogating existing international agreements. It is also definitely not germane to a custom simplification bill.

We, therefore, pray for the elimination of section 22, and thus leave this tax situation unchanged.

Senator KERR. Who do you think was responsible for putting this provision in the bill?

Mr. ARMSTRONG. It was done as an aftermath of the GATT agreement. You see, we had our fellows at this GATT understanding, and they said, "Well, yes, we will do what we can to make everything honest and make them all duties," and they came back, and I think it was probably the State Department may have started it in an attempt to show the other countries that we were willing to do even more than we had promised to do under the GATT, and I think it came through the State Department.

Just on thinking about it, they said, "Well, after all, this tax is being paid here, and if we just fix it up and make an import tax out of it, it will be substantially the same thing," but they did not think it through. They did not realize that they would be collecting it 4 or 5 months earlier than they are at present, and collecting from a totally different industry, and from just a few people. There are less than 20 of us that would pay this whole tax that is now paid by a couple of thousand people, probably.

Senator KERR. In what general classification?

Mr. ARMSTRONG. Oil refiners and soap makers are the people who pay it at present.

Senator KERR. In what form?

Mr. ARMSTRONG. In the form of the processing tax of 3 cents a pound.

Senator KERR. What this would do would repeal that. Does it repeal that?

Mr. ARMSTRONG. No. At present the copra comes in free.

Senator KERR. Yes.

Mr. ARMSTRONG. We crush it and we make crude oil.

Senator KERR. Yes.

Mr. ARMSTRONG. We do not pay a nickel, but the man who buys the crude oil from us has to show that in his records, at at the end of each month, 30 days, after he has processed it, he has to pay his 3 cents a pound processing tax to the internal revenue; that is when it is paid.

Senator KERR. Does this bill say anything about that processing tax?

Mr. ARMSTRONG. This bill says precisely that you have to take that 3 cents and step back and——

Senator KERR. In other words, what it does then is to repeal the processing tax and enact an import tax.

Mr. ARMSTRONG. Which is presumed to be an equivalent. The Tariff Commission has to work out an equivalent.

The CHAIRMAN. Converts it into an import tariff.

Mr. ARMSTRONG. Converts it into an import tariff.

The CHAIRMAN. Thank you very much. If there are no other questions, thank you very much, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, sir.

(The letter previously referred to is as follows:)

CURTIS & TOMPKINS, LTD.,
San Francisco, April 25, 1952.

Oil content of Philippine copra.

Mr. I. N ARMSTRONG,
El Dorado Oil Works,
311 California Street, San Francisco, Calif.

DEAR MR. ARMSTRONG: In reply to your question regarding the range of oil content found in copra, we can advise that we have found this to be from 61.8 to 67.7 percent. This covers our experience in Philippine copra, which was the basis of your inquiry.

Trusting the above will provide you with the information desired, we are
Yours very truly,

CURTIS & TOMPKINS, LTD.,
H. DEBUSSIERES, *Vice President.*

The CHAIRMAN. Mr. Acer? All right, you may be seated and identify yourself for the record, please, sir.

STATEMENT OF VICTOR A. ACER, VICE PRESIDENT, SPENCER KELLOGG & SONS, INC.

Mr. ACER. I am Victor A. Acer, vice president of Spencer Kellogg & Sons, Inc., of Buffalo, N. Y.

The CHAIRMAN. What business is that, Mr. Acer?

Mr. ACER. Cur company are crushers of oilseeds and refiners of various vegetable oils.

The CHAIRMAN. Yes, sir. All right.

Mr. ACER. I have no prepared statement. I wanted to appear here in opposition to the proposal in section 22 of this bill to change this cocoanut-oil tax from a processing tax to an import duty. I

am on the same side as is Mr. Armstrong, and I understand that the only point we can make on that subject is to approve the proposal or disapprove the proposal.

It seems to me that the proposal, whoever put that in, and called it customs simplification, perhaps had a sense of humor, because I do not see that it is customs simplification at all. It seems to me——

Senator KERR. I must say that I agree with your conclusion but not the premise. I would say that they must have had a sense of humor.

Mr. ACER. Perhaps so, Senator Kerr.

To me it seems that it will complicate things very greatly to try to collect the money now being collected through a 3-cent-per-pound processing tax on oil, to collect that equivalent through an import tax on copra, the oil content of which is a variable quantity, and varies from year to year, varies from season to season, and varies from point of origin by a very great amount.

Therefore, I feel it is going to be extremely difficult and impossible to do it fairly, because there is a varying quantity of oil in the copra, and when the oil is taken out of the copra varying oil yields are obtained, depending on the method of extraction.

It would be simple if it were imported as oil, but of the total importations of oil and copra only about 10 or 15 percent of those importations come in as oil, and all the rest come in as copra.

Another point I would like to make is that it would require crushers like ourselves to obtain, in one way or the other, a great deal more working capital to pay this out as an import duty. The burden would be on us where now it is on the user of the oil, to pay the processing tax.

It has been estimated, and I believe the figure is right, that something over $18,000,000 would have to be paid out by the copra-crushing industry in the form of import duties and, therefore, we would need that much additional working capital, which is rather hard to obtain now under the present tax burdens and under higher bank rates.

The other point I would like to make before I conclude is that in the copra-crushing industry now, as well as in the oilseed-crushing business generally, there is currently some unemployment.

I feel that the fixing of this 3-cent-per-pound tax into an import duty would increase that unemployment, which we do not want to see happen.

That concludes my statement, and I thank you for the opportunity to appear.

The CHAIRMAN. Well, thank you very much for your appearance.

Mr. ACER. Thank you, sir.

The CHAIRMAN. Mr. Gordon?

STATEMENT OF JOHN B. GORDON, SECRETARY, BUREAU OF RAW MATERIALS FOR AMERICAN VEGETABLE OILS AND FATS INDUSTRIES

Mr. GORDON. Mr. Chairman, my name is John B. Gordon.

The CHAIRMAN. Yes, sir. You may be seated.

Mr. GORDON. I am secretary of the Bureau of Raw Materials for American Vegetable Oils and Fats Industries, the address of which is 1243 National Press Building, Washington, D. C.

I have a brief which I desire to file for the record.

The CHAIRMAN. Yes, sir; you may do so.

Mr. GORDON. And which I would like briefly to touch upon.

The CHAIRMAN. Your brief will be inserted in the record in its entirety, and then you may proceed as you wish.

Mr. GORDON. Mr. Chairman, the Treasury Department analysis of the Customs Simplification Act of 1951 states on pages 41 and 42 the reason why it is proposed to change the processing tax to an import tax.

Briefly, the Treasury Department analysis states that it is because of the requirement of article III of GATT, which is the General Agreement on Tariffs and Trade.

Senator KERR. They state what now?

Mr. GORDON. They state that it is due to a requirement of article III of GATT, which is the General Agreement on Tariffs and Trade.

Senator KERR. That would take it out of the category of customs simplification projects, then; would it not?

Mr. GORDON. I think it would; yes, sir. I think that very definitely would be the case. In their analysis there is no suggestion that this would contribute to customs simplification.

I might briefly read that section of the Treasury Department analysis:

> As a matter of principle, it is desirable that taxes for protective purposes should be levied at the customs frontier, and that once imported merchandise has passed the customs barrier it should not be discriminated against as compared with merchandise of domestic production. This general rule of nondiscriminatory internal taxation for imports (national treatment) has been included in our commercial treaties and agreements for many years. The same rule in somewhat broader terms is contained in article III of the general agreement. Under this provision the processing taxes imposed by section 2470 of the Internal Revenue Code should be either done away with or converted into import taxes because they discriminate in fact against imports.

They do not propose to do away with them. It must be borne in mind that they simply propose to convert them into import taxes.

While they mention article III specifically of the General Agreement on Tariffs and Trade, actually this matter of internal taxes, the desirability of their removal or subjecting them to negotiation and what not, is specifically mentioned in other sections of the General Agreement on Tariffs and Trade specifically named in part I, article II (b) and (c), and part II, article III (1).

Now, there is not, however, under the General Agreement on Tariffs and Trade any obligation whatsoever on the part of the United States to make these changes from processing taxes to tariff duties because each and every one of these articles, specifically the one which the Treasury Department refers to, contains this provision:

> Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this agreement—

in other words the United States——

Senator KERR. Where are you reading from?

Mr. GORDON. I am reading from page 3 of my——

Senator KERR. What are you quoting from?

Mr. GORDON. I am reading from part I, article II, Schedules of Concessions of the General Agreement on Tariffs and Trade, and this is paragraph (c) thereof, and it is quoted on page 3 of my brief, which, I think, you have before you.

Senator KERR. Part I, article II, paragraph what?

Mr. GORDON. Paragraph (c). The section I am reading is down in the middle of (c). It starts with—

Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this agreement—

and so forth.

Now, the same language appears in (b) of part I, article II, and that is underlined in my brief.

Now, somewhat identical language appears at the end of part II, article III. It says:

no contracting party shall apply new or increased internal taxes on the products of the territories of other contracting parties—

and so forth.

Now that, Mr. Chairman, is why I say that the United States is under no obligation, and I believe it is recognized by the authors of section 22, that we are under no obligation to convert processing taxes to import taxes. They apparently are going beyond what they know are their recognized obligations in making this recommendation as respects the Customs Simplification Act of 1951.

We remind you that these processing taxes were levied in 1934. They were in existence in 1947 when the General Agreement on Tariffs and Trade was arrived at. They are not new. Therefore, this country has a perfect right under the General Agreement on Tariffs and Trade to keep them in their present form, which is that of a processing tax.

Senator KERR. Who would benefit by this proposed change?

Mr. GORDON. Senator, we have looked over the entire field, and we cannot find anyone that has asked for it. It does not originate with the countries of origin of these products which they propose to change; that is, countries like Indonesia, they have made a protest to the State Department which has referred the protest to this committee. It does not originate with the Belgian Congo because the Government of Belgium has made a protest to the Department of State against this change. The British Government, in whose colonies originate a good many of these products, has made a protest, so it is difficult for us to find out where there is any demand for it.

Senator KERR. If you can answer my question then I would answer your inquiry.

Mr. GORDON. Yes, sir.

Senator KERR. Who would profit by it?

Mr. GORDON. I am afraid, sir, there is not anybody that would profit by it. You may take this as further evidence: In the testimony which was delivered before the Ways and Means Committee at the time this section was up for consideration there was not one single witness who spoke in favor of this change as proposed in section 22 in the bill.

Senator KERR. Or in justification of it?

Mr. GORDON. I mean—wait a minute, I had better say this, in favor of the change-over from processing tax to import tax.

On the other hand, the testimony was on the other side. It was unanimous against it.

Now, I include in that statement even the Treasury and the State Department, and I understand that the bill was written in the Treas-

ury Department, no evidence was given by them. I read the testimony carefully, and I could not find any statement made on it.

Now, as Mr. Armstrong said, the facts which we are presenting to you now were not presented to the Ways and Means Committee for the simple reason that we were trying to secure the repeal of the tax, but we were thrown out on a point of order. We never suspected that that was going to happen. We did not realize that we were not in order with our amendment. And when it was thrown out it was too late to get our testimony in on changing it from a processing tax to an import tax. If we are going to live with this tax, it is infinitely better for the industry that crushes the copra and palm kernels to live with it as a processing tax than to live with it as an import tax, because of the difficulties which have been described, and which I will describe a bit further.

Senator KERR. Does that processing tax apply to oil derived from domestic sources?

Mr. GORDON. Yes, sir; it applies without exception or discrimination.

Senator KERR. In other words, if the processing tax were eliminated, it would be eliminated with reference to the oil derived not only from imported products but from domestic products; would it not?

Mr. GORDON. So far as the processing tax is concerned, when the import tax is levied, it is a case of just shifting from——

Senator KERR. When the import tax is levied it applies only to imported products.

Mr. GORDON. You take it from one pocket and put it into another. Yes, sir; the import tax would apply to imports. But we have no domestic, no indigenous, production of these articles. They are all produced outside of the United States.

Senator KERR. Aren't there domestic products from which competitive oils are secured?

Mr. GORDON. Well, in a degree, yes, sir; but——

Senator KERR. Would this be of benefit to them?

Mr. GORDON. Well, of course, that would enter into the basic philosophy as to why the tax was levied originally. We may grant, for purposes of argument, that there was some reason for levying it originally.

Senator KERR. I am not trying to argue; I am just trying to get the picture. One gentleman here talked about soybean oil.

Mr. GORDON. Yes. May I say——

Senator KERR. And other oils which, I presume, were of domestic origin.

Mr. GORDON. Yes. I think you may say this without fear of contradiction, Senator, that no domestic producer thinks that he would benefit from this change. As a matter of fact, two or three farm groups appeared before the Ways and Means Committee and objected to the change being made. Now, the reason they objected to it was because they had some idea that if you changed the processing tax to an import tax that it would be subject to negotiation under the flexible tariff provision—that is, section 350 of the Tariff Act of 1930.

Now, that is the case because there is a provision in this bill that specifically provides that the import tax is not subject to negotiation

and, as stated by both the Treasury and the State Department witnesses in testifying on this bill, it is not proposed to raise or lower a rate of duty.

Of course, actually, as has been pointed out, they probably would succeed in greatly lowering the duty or raising the rate of duty through the fluctuation of the oil content of these oilseeds which we bring in for crushing—that is, copra and palm kernels—and on which the processing tax on oil would be changed to an import tax.

In respect to the oil content, the point was brought out that since the Tariff Commission under the terms of this bill must determine for the committees of Congress—presumably after it is signed—the oil content of copra and palm kernels, there will not be any definite percentage placed in this bill.

Now, when they go to find the oil content of copra, they are going to find a variation, as set forth in this book by Jamieson, Vegetable Fats and Oils, second edition, that the oil content of copra ranges from 60 to 70 percent, which is a variation of 16.67 percent in oil content between different kinds of copra.

They say they do not intend to raise or lower the tariff rate of duty, but, you see, they just could not get away from it there. They could not set any rate which would be fair and which would be equitable.

In the case of palm kernels, which are the next most important oilseed that would be affected, the variation there is from 44- to 53-percent oil content. Now, that is a variation of 20 percent between the high and the low.

Mind you, they vary more, you might say, than the total oil yield of our chief domestic oilseed in this country, which is cottonseed, and it is pretty near the same for soybeans, so that you would have inequity between producers of copra from different areas; you would have an inequity where one importer of copra happened to bring copra in from an area where you had a high oil content; you could not possibly say, "Well, you can pay on the total oil content" because it would take an indefinite time to analyze copra and palm kernels at the port of entry and say, "You have got to pay so much duty. Here is the oil content," and it would be very hard to transact business because the oil content of these oilseeds is whatever it is. If it is 62 percent or 60 percent, that is a fair tender—that is, in the case of copra; if is it 70 percent, it is a fair tender; if it is 44 percent in the case of palm kernels, that is a fair tender; if it is 53 percent, it is a fair tender. The oil content is what it is and there is no stipulation as to what it is in advance when you buy it.

Now, then, may I point out——

Senator KERR. What basis do you buy it on, so much a pound?

Mr. GORDON. By the ton.

Senator KERR. By the ton?

Mr. GORDON. Yes, sir.

Senator KERR. Do buyers sample it when it comes in, and make an offer?

Mr. GORDON. No, sir. You buy it in the country of origin, place a letter of credit, and they ship against that letter of credit, generally drawing 95 percent against it.

Now, then, a second part of this bill which I wish to touch upon is the proposal to convert the taxes on hempseed, perilla seed, kapok seed, rapeseed, and sesame seed into import taxes—not that it is of any

interest to us specifically—but the point is that they are proposing to do something that has already been done. The language of that portion of section 22, as written, is entirely redundant. In other words, the taxes on those five oilseeds are already collected at the port of entry, the same as its expected to be accomplished by changing the processing tax on cocoanut oil, palm kernel oil, and palm oil into import taxes.

Now, mind you, there is a further consideration which shows that these are actually considered by the State Department to be import taxes at the present time, for the simple reason——

Senator KERR. Is there a different situation with reference to this second group of oil-bearing seed that you have referred to?

Mr. GORDON. Yes, sir. The situation is this: That has not any business in the bill at all and never should have been put in there.

Senator KERR. I am trying to get the information.

Mr. GORDON. Yes, sir.

Senator KERR. Now, on the copra and the palm kernel and the palm oil, there is at this time no import tax of any kind?

Mr. GORDON. Well, there is on the oils. It is not on the oilseeds that——

Senator KERR. I am talking about the seed.

Mr. GORDON. The palm kernels and the copra, there is no import duty.

Senator KERR. Now, then, with reference to this other group that you were talking about, sesame seed, rapeseed, hempseed, kapok seed, and perilla seed, is there presently a tax on those seed imports?

Mr. GORDON. Yes, sir. It is an import tax, and they propose to change it into an import tax when it is already an import tax. Further, there is this fact: that the statutory rates of tax on every one of those oilseeds have been lowered, which proves that they are regarded as import taxes and not as processing taxes. Therefore, this language is absolutely redundant. It does not belong in the bill.

It is easy to concede, therefore, that since this portion of the bill proposes to accomplish something that has already been done, that that should be stricken out, and we earnestly hope when you do, strike that section out, that you will strike that section which proposes to change processing taxes into import taxes, and that will dispose of section 22 in its entirety.

Senator KERR. In other words, when we start striking out that which is redundant, you just think we ought to——

Mr. GORDON. Yes, sir.

The CHAIRMAN. Strike out all of it.

Mr. GORDON. Strike it all out, yes, sir.

Now, the statutory rates of duty on those oilseeds are all on page 5 of my brief. Only one of them still stands at the statutory rate—that is the one on perilla seed—which is 1.38 cents a pound, but that also had been reduced 50 percent under section 350 of the Tariff Act of 1930 in the Chinese Trade Agreement. But the Chinese denounced their trade agreement, and therefore it reverted to the original rate, that is, the statutory rate of 1.38 cents per pound.

Senator KERR. What is perilla seed?

Mr. GORDON. It is a seed from which you obtain a drying oil, with a very high absorptive power for oxygen, which is used in the manu-

facture of paint and high-gloss varnishes. It is produced mainly in the Orient.

The CHAIRMAN. The same as tung oil. It serves the same purpose.

Mr. GORDON. Somewhat; yes, sir.

The CHAIRMAN. Somewhat the same function?

Mr. GORDON. Yes, sir.

The CHAIRMAN. Your recommendation, Mr. Gordon, is that this Section 22 be taken out of this bill?

Mr. GORDON. Yes, sir.

The CHAIRMAN. As adding nothing to customs simplification, and it necessarily brings about some complications in converting the tax over to an import duty.

Mr. GORDON. Yes, sir. And that it would bring a very grave burden upon the copra-crushing industry. You understand that these men in that business have had a long seige of no profit, and I am afraid if they were confronted with this responsibility of raising additional working capital it would put some of them out of business.

The CHAIRMAN. Would there be any likelihood, or put it the other way around, would there be any temptation to crush all these, say, copra into oil and ship it into this country as oil? Would there be some danger of that happening?

Mr. GORDON. If converted into an import tax?

The CHAIRMAN. If you converted it into an import tax.

Mr. GORDON. Well, of course, the oil would bear a three cents per pound tariff duty.

The CHAIRMAN. Yes, that is true.

Mr. GORDON. That would not benefit. I cannot see that anybody would benefit, Senator, although such a trend as you mention might be started if the inequities against copra proved too great.

The CHAIRMAN. You cannot see anyone benefited?

Mr. GORDON. No, sir; not a soul.

Senator KERR. You say this is where everybody could be hurt and nobody helped.

Mr. GORDON. Yes, sir; and seriously, sir.

The CHAIRMAN. Thank you very much, Mr. Gordon. Your whole brief will appear in the record.

(The brief of John B. Gordon is as follows:)

BRIEF SUBMITTED BY JOHN B. GORDON, SECRETARY, THE BUREAU OF RAW MATERIALS FOR AMERICAN VEGETABLE OILS AND FATS INDUSTRIES, URGING THE SENATE FINANCE COMMITTEE TO STRIKE SECTION 22 FROM THE PROVISIONS OF H. R. 5505 (THE CUSTOMS SIMPLIFICATION ACT OF 1951)

Since section 22 of H. R. 5505 is the only section which is of specific interest to the members of the Bureau of Raw Materials for American Vegetable Oils and Fats Industries, it is discussed in detail. Section 22 is of particular interest to crushers of copra, refiners of coconut oil and producers of fatty acids, when the basic material is either crude coconut oil or palm-kernel oil. Section 22 proposes to convert the processing taxes levied on coconut, palm, and palm-kernel oils in the Revenue Act of 1934 to import taxes. Collection of the import taxes would be made by the Commissioner of Customs rather than by the Commissioner of Internal Revenue as is presently required by law in the case of the processing taxes.

The foregoing conversion of processing taxes to import taxes is proposed to be carried into effect because of the provisions of part I of article II of the General Agreement on Tariffs and Trade and part II, article III, as entered into at Geneva in 1947, as quoted below:

"PART I, ARTICLE II—SCHEDULES OF CONCESSIONS

"1. (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

"(b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

"(c) The products described in Part II of the Schedule relating to any contracting party, which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates, shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty."

"PART II, ARTICLE III—NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

"1. The products of the territory of any contracting party imported into the territory of any other contracting party shall be exempt from internal taxes and other internal charges of any kind in excess of those applied directly or indirectly to like products of national origin. Moreover, in cases in which there is no substantial domestic production of like products of national origin, no contracting party shall apply new or increased internal taxes on the products of the territories of other contracting parties for the purpose of affording protection to the production of directly competitive or substitutable products which are not similarly taxed; and existing internal taxes of this kind shall be subject to negotiation for their reduction or elimination."

1. The United States is under no obligation under the terms of GATT (or any other instrument) to convert the processing taxes on coconut, palm-kernel and palm oils into import taxes

Attention is called to the fact that the concluding sentence of paragraph 1 (b) of part I, article II, of GATT reads as follows:

"Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date."

It will also be noted that similar phraseology appears in paragraph 1 (c) of part I, article II, of GATT. It is also pointed out that paragraph 1 of part II, article III, contains somewhat similar language, which reads "no contracting party shall apply new or increased internal taxes."

Attention is called to the foregoing language to show that there is no obligation incumbent upon the United States to change the processing taxes on coconut, palm, and palm-kernel oils into import taxes, in view of the fact that these taxes were instituted prior to the entry of the United States into GATT in 1947, having been in effect since May 1934, and, having been in effect since that date, they are not "new" taxes.

Attention is also called to the fact that part II, article III, as quoted above, contains the following language: "and existing internal taxes of this kind shall be subject to negotiation for their reduction or elimination." It is obvious that this provision was expressly ignored in the drafting of section 22, as may be seen from the inclusion of a specific provision on page 41, lines 18 to 23, inclusive, which forbids modification of the processing taxes after conversion into import duties under section 350 of the Tariff Act of 1930, as amended.

The ignoring of the provision that "existing internal taxes of this kind shall be subject to negotiation for their reduction or elimination" furnishes additional proof that the United States is under no obligation whatsoever to make any of the changes proposed in section 22 of H. R. 5505. In other words, if the authors of H. R. 5505 were seeking to perform an obligation of the United States under GATT, it would appear that they would do so in toto by making the processing taxes when converted to import taxes subject to reduction, rather than to specifically prohibit such reduction.

2. The proposal to convert the taxes on hempseed, perilla seed, kapok seed, rapeseed, and sesame seed into import taxes as contained in section 22 is redundant, as these taxes are already collected at the port of entry and have the status of import taxes

H. R. 5505 also proposes to convert the taxes on hempseed, perilla seed, kapok seed, rapeseed, and sesame seed into import taxes. The taxes on these oilseeds likewise originated in the Revenue Act of 1934. They are, however, already being collected at the port of entry at the time of importation by the collectors of customs. They are already regarded as import taxes, and not as internal taxes, as evidenced by the fact that the statutory rates of tax as given on page 39, lines 24 and 25, and line 1 of page 40 of H. R. 5505. have been reduced under the provisions of section 350 of the Tariff Act of 1930, as amended. We give herewith the statutory rates of duty on these five oilseeds, with the existing rates of import tax.

	Statutory rate	Present rate
	Cents	
Hempseed	1.24	0.62 cent GATT.
Perilla seed	1.38	1.38 cents [1]
Kapok seed	2.0	1.0 cent Torquay.
Rapeseed	2.0	1.0 cent GATT.
Sesame seed	1.18	0.59 cent GATT.

[1] Lowered by GATT to 0 69 cent per pound, but restored to statutory rate when China withdrew from GATT.

We point out that none of the above reductions in amount of tax could have been made if the taxes borne by the five oilseeds had the status of internal taxes as internal taxes have been ruled by the Department of State to be immune from negotiation for reduction. The portion of section 22 which relates to the taxes on the five oilseeds above listed may, therefore, be considered as redundant by the Senate Finance Committee in that they propose to do something which was accomplished at the time of the original enactment of these five taxes. The Finance Committee should, therefore, of necessity eliminate these provisions of section 22. If the Finance Committee does this and accepts our initial recommendation that it eliminate the portions of section 22 dealing with the changing of processing taxes into import duties, this will dispose of section 22 in its entirety.

3. The change-over from processing taxes to import taxes would require copra and palm-kernel crushers and coconut oil processors to obtain $18.6 million additional working capital

The collections from the processing tax on coconut oil in the fiscal year ending June 30, 1951, totaled $18,572,838.15. The conversion of the processing tax on coconut oil into an import tax would oblige the crushers of copra, the refiners of coconut oil and the manufacturers of fatty acids and higher alcohols from crude coconut oil to pay out this amount of money at the time of importation (granted that consumption would be as large in the current fiscal year). The present system whereby the processing tax is collected on the first domestic processing does not require the payment of the processing tax until some 3 or 4 months after the entry of the coconut oil, and in the case of copra crushers who produce crude coconut oil solely the tax is not paid by them at any time.

The collection of the processing tax on the first domestic processing results in the factory consumer having to pay the processing tax. This means responsibility for the payment of the tax to the Treasury is diffused over a wide area; i. e., the many factory consumers pay the tax, whereas the collection of the tax at the port of entry would throw the burden upon the baker's dozen or so of copra crushers, coconut-oil refiners, and distillers of fatty acids from crude coco-

nut oil. Conversion of the processing tax to an import tax would, therefore, make it mandatory for this handful of processors to procure additional working capital in the amount of $18.6 million over and above their current requirements.

The procuring of additional working capital is exceedingly difficult insofar as the procuring of such capital from the accumulation of savings by corporate entities is concerned. It can only be obtained by bank loans, which would add materially to operating expenses, or by the issuance of bonds or stock issues, the salability of which is doubtful as profit in the case of crushers of copra in practically nonexistent due to the severe competition between European, Philippine, and United States buyers for the Philippine copra supply. (It should be understood that the purchases of copra by United States buyers are confined to the Philippines by virtue of the 2 cents per pound differential in the processing tax in favor of the Philippines—a preference which is continued by the Philippine Trade Act of 1946 (Public Law 371, 79th Cong.) until July 4, 1974.) This condition of no profit has prevailed for so long a period of time that some of the crushers of copra are very near the end of their rope. The necessity of raising additional working capital could very well mean the forcing out of business of some of these firms. Parenthetically, the crushing of palm-kernels in the United States is carried on by the crushers of copra. A more correct designation for this industry would be the copra and palm-kernel crushing industry.

In prewar days approximately 90 percent of Philippine copra and coconut oil was shipped to the United States: 71 percent was shipped to the United States in 1948; 69.5 percent in 1949; 67.3 percent in 1950; and 50.2 percent for 1951.

Despite the Munitions Board stockpiling program during 1951, only 50.2 percent of the Philippine copra and coconut-oil exports were shipped to the United States in that period. Since the Munitions Board has expended practically all of its funds which it had available for the purchase of coconut oil for the current fiscal year, it means that the calendar year 1952 will see an even further decrease in the proportion of the Philippine copra and coconut-oil supply which the United States receives. This is a bleak prospect for the copra-crushing mills, as they have largely been dependent upon the stockpiling program to keep them in operation over a period of many months.

4. Conversion of the processing tax on coconut oil to an import tax would have serious repercussions on commerce between the United States and the Philippines

The Philippines in the year 1950 stood twelfth in importance in the volume of exports from the United States and in the ranking among the suppliers of products imported by the United States they stood tenth. In the calendar year 1951, the United States exported $350,000,000 worth of merchandise to the Philippines (35 percent more than in 1950). Of this sum, $92,500,000 worth were agricultural products. The Philippines can buy from the United States only to the extent that they are able to sell their products to this country. The present diversion of the flow of Philippine copra from the United States to Europe means that the Philippines will buy proportionately less from the United States.

To transport a cargo of copra from the Philippine Islands to the west coast of the United States where most of the copra crushing mills are located requires 3 weeks. To transport copra to New Orleans from the Philippine Islands and up the Mississippi River to reach interior copra-crushing mills requires 7 weeks. To transport copra and coconut oil from the Philippine Islands to the copra-crushing mills on the Atlantic seaboard requires 5 to 6 weeks. A month or more may elapse before a steamer is booked by the Philippine Islands dealer. The elapsed time between the date of purchase in the islands and delivery in the United States may, therefore, range from 2 to 3 months.

The long period of time required to lay Philippine copra and coconut oil down in the United States makes it desirable that crushers and refiners carry stocks on hand against which no commitments have been made. To not do this would seriously diminish the volume of business done. Somewhat the same factors exist in the crushing of palm kernels which come from the west coast of Africa and from Indonesia.

Should the processing taxes on coconut and palm-kernel oils be converted to import taxes crushers of copra and palm-kernels and refiners of coconut oil will only rarely be willing to make the heavy investment in the import taxes to the extent required in the carrying of adequate unsold stocks. This will simultaneously make their business even less profitable than at present while reducing the flow of commerce between the United States and the Philippines.

5. The imposition of an import tax in lieu of the processing tax would create inequities between copra from different producing areas and between individual crushers and would result in complicating customs procedure

Section 22 does not designate the amount of duty which shall be levied on copra and palm kernels but leaves the determination to the United States Tariff Commission. In the case of copra that agency would find that the oil content of copra varies in various producing regions. Some is sun dried. Some is kiln dried. The latter, if dried by native methods, is apt to be high in moisture. Hence, the Tariff Commission in endeavoring to ascertain the duty on copra which would be equivalent to the 3-cent per pound processing tax on coconut oil would be obliged to take into consideration the fact that speaking in general terms the oil content of copra varies with its moisture content. Further, the Tariff Commission would find that copra produced in an area which grows small coconuts will yield more oil than copra produced in an area where large coconuts are grown. For these reasons the application of a flat rate of import tax on copra would be apt to work so great an injustice that it had best not be attempted in the first place. On the other hand, the basing of the amount of tax on the actual oil content would be so difficult of administration that it is a foregone conclusion that the result would not be customs simplification.

The collection of the processing tax on coconut and palm-kernel oils on the first domestic processing works no discrimination among crushers. A tax on copra would, however, because those crushers who are equipped with solvent extraction facilities would obtain considerably more oil per ton of copra or palm-kernels than those who are dependent upon expellers solely. Thus, the amount of tax paid per pound of oil produced would be proportionately less for mills using solvent extraction. No such inequity arises with the processing tax in that a uniform tax of 3 cents per pound must be paid upon each and every pound of coconut and palm-kernel oil processed in the United States.

6. The industries affected by section 22 already have an unemployment problem which would be immediately aggravated if section 22 remains in H. R. 5505 on final passage

A very large proportion of the copra-crushing industry on the east and west coasts of the United States is shut down at present. Those crushing mills which can operate do so only on an irregular basis. This means that they have been obliged to lay off large numbers of their employees. Much of this unemployment is due to the loss of 30 percent of the chief market for coconut oil which is in the soap industry due to the competition of synthetic detergents with soap.

Refiners of coconut oil who in pre-World War II days supplied 75 percent of the ingredients of oleomargarine now are unable to market a single pound of their product for that use. This is due to the fact that during World War II when oleomargarine manufacturers were denied the use of coconut oil, because of the need to preserve available supplies for military use, they found that a better product could be made from cottonseed and soybean oils.

If section 22 remains in H. R. 5505 upon final passage, because of the further difficulties with which it will confront copra crushers and coconut oil refiners in operating at a profit, it will make it even more difficult to provide employment for their workmen. This furnishes an additional reason for eliminating section 22 from the bill now before the Finance Committee.

7. We doubt that the authors of H. R. 5505 realized the adverse effects which section 22 would have on the copra and palm-kernel crushing industries and are of the opinion that the authors of the bill will agree to the elimination of section 22 when same are pointed out to them

The authors of section 22 while undoubtedly aware that the United States is under no obligation under any international covenant to change existing processing taxes into import duties are assuredly unaware of the injury which would result to the copra-crushing industry. These phases have been dealt with adequately in the preceding portion of this brief.

One phase which has not been touched upon is the necessity of a strong copra-crushing industry in the United States to the national defense. The Munitions Board carries a 5-year supply of coconut oil which it stocks for military needs such as the manufacture of napalm bombs, rubber substitutes, insecticides and germicides, synthetic resins, etc. This is an additional reason for the elimination of section 22.

A further aspect which should be taken into consideration is that copra and palm kernels are on the free list in the Tariff Act of 1930. There is, in fact, no record of an import duty having been levied on these oil-bearing ma-

terials in any tariff act—including that of 1789, which was the first tariff act enacted by the Congress. Section 22 would require the imposition of import taxes on copra and palm kernels. Both are bound on the free list in GATT. While not contributing to customs simplification, these import taxes would complicate our diplomatic relations. Not only Great Britain, at whose request copra and palm kernels were bound on the free list, but all other suppliers of copra and palm kernels to the United States will undoubtedly object to arbitrary removal by the United States of copra and palm kernels from the free list of GATT. Further, the attempt to impose a customs duty on copra which would be administered on an equitable basis would present difficulties which would complicate rather than simplify customs procedure.

Section 22 of H. R. 5505 also proposes to change the processing tax on palm oil to an import tax. Since this brief deals with the problems of the copra and palm kernel crushing industry, we will not enter into a detailed discussion of palm oil and will be content to point out that palm oil is tax-exempt as respects its chief usage; i. e., in the manufacture of tin plate. Its other fields of usage have been largely interdicted by the 3-cent per pound processing tax. Belgium, the Republic of Indonesia, and Great Britain, who are the chief suppliers of palm oil, would like to regain some of this business—particularly that which they had in the textile industry. Their chances of regaining any of it will be lessened by the change-over from a processing tax to an import duty for reasons similar to those applying in the case of copra, palm kernels, coconut, and palm-kernel oils.

We have heard of no demand emanating from the countries of origin of copra, coconut oil, palm kernels, and palm oil for a change-over from processing taxes to import taxes. Two of these countries, i. e., Indonesia and Belgium, which speaks for the Belgian Congo, in fact, have submitted protests in opposition to the proposal through the intermediary of the State Department. Great Britain has also protested section 22.

In the testimony delivered on H. R. 1535 (forerunner of H. R. 5505) before the Ways and Means Committee not one witness testified in favor of the changes proposed in section 22 of the bill now before the Finance Committee. On the contrary, the testimony was unanimously against the changes proposed. In view of the definite lack of demand for the changes proposed in section 22 and in the absence of any obligation on the part of the Government of the United States to make the proposed changes, we see no reason why section 22 should not be eliminated from H. R. 5505 and most earnestly petition the Senate Finance Committee to do so.

The CHAIRMAN. Mr. A. E. Thorpe?

(No response.)

The CHAIRMAN. Is Mr. Rocca here?

Mr GORDON. Mr. Rocca is not here. I spoke for him.

The CHAIRMAN. And Mr. Thorpe is not here.

I believe that finishes the testimony, then, of the witnesses.

The hearings will be adjourned until we have an executive session of the full committee.

(The following information was supplied for the record:)

BRIEF SUBMITTED BY EDWIN WILKINSON, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF WOOL MANUFACTURERS, CONCERNING H. R. 5505 (THE CUSTOMS SIMPLIFICATION ACT)

Section 303 of the Tariff Act of 1930 provides:

"Whenever any country * * * shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country * * * and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States * * * there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant. however the same be paid or bestowed * * *."

That is the law. That is the language. It is clear. It is specific. It is as understandable today as it was in 1930.

Mr. Frank A. Southard, Jr., special assistant to the Secretary of the Treasury, who has appeared before this committee, seems to suffer the delusion that these

words have different meaning in this modern world as he refers to it. We do not agree. It is obvious to us, and we are sure it must be to you, that when those words were written in section 303, Congress was not thinking solely in terms of "cash bounties" nor, indeed, of any single set of circumstances. The words "directly or indirectly" bear witness on this point as do "however the same be paid or bestowed."

In his apologia, representing the Secretary of the Treasury, Mr. Southard says "* * * you will appreciate that the problem is greatly complicated for us by the growth in recent years of complex systems of multiple export or buying exchange rates," and further along he catalogs alleged underlying reasons for the maintenance of multiple rates of exchange:

(*a*) "* * * countries often find it much easier to collect revenue through their central banks and exchange authorities * * *."

(*b*) "(They) can also be an effective means of controlling the inflationary effects of large earnings in a few export industries at a time when other export industries are not booming."

Mr. Southard does not contend that multiple rates of exchange may not be used in order to bestow bounties or grants. In fact he admits that Treasury "has always felt that it is possible." However, he contends that "the extreme complexity of the motives and economic results" makes it "extremely difficult * * * to determine that a system of multiple rates of exchange bestows a bounty or grant."

We believe the "motives" for multiple exchange rates have no place in this discussion. There is not one word in section 303 dealing with motives for bounties or grants, however achieved. Important are the economical results.

In November of 1950 we advised the Treasury Department of the economic result of the fact that Argentina and Uruguay maintained multiple rates of exchange for wool and wool top. In the Argentine the rate for wool was 5 pesos to the United States dollar and for wool top it was 7½ pesos, a subsidy on the manufactured top in the magnitude of 50 percent of the value of the raw material of which the top is manufactured. There is nothing complicated about this.

Mr. Wellman, one of our directors and the president of Nichols & Co., top manufacturers, has recorded the economic results here in the United States. From nothing in 1947, top imports from Argentina and Uruguay alone have reached a volume of 7,564,000 pounds in 1951. Wool top from the Argentine has been offered for $1.41 per pound on the same day that suitable wool from the same source, to make a like grade of top, was quoted at $1.42 per pound clean basis. And it costs about 48 cents a pound to convert that wool to top. There is nothing complex about this, yet Treasury says this difference in exchange rates does not constitute a grant or bounty in the "usual sense of the term" (letter: Commissioner of Customs, December 14, 1950). Nor was this an offhand opinion, for this view was reaffirmed one month and a half later.

Now Treasury, which apparently can't recognize a bounty or grant when it sees one, stands before you as sponsor, and asks your support of a provision that would make implementation of section 303 dependent upon a finding by the Secretary that an American industry is injured or retarded in consequence of the bestowal of a bounty or grant. Based on the futile experience we have had in attempting to persuade the Treasury Department to administer the existing law as we believe it is written, we attest that in our judgment such an amendment would be most hazardous and against the interests of our industry and its workers and, in the final analysis, the national welfare.

There is much more at stake in the principle involved here than the relative volume of top produced in this country and that imported from abroad. Mr. Southard has said before this committee: "* * * the American processor has an active interest in obtaining his imports at the lowest cost possible." How wrong he is if he infers that they favor continuation of the flaunting of our national policy by foreign interests by such sophisticated subsidy schemes. Mr. Arthur O. Wellman, appearing before this committee on April 28, 1952, testified that he was probably one of the largest importers of these subsidized tops and that it had attractive profit possibilities. Yet he pleaded for you to take measures that would put an end to the practice in the interest of the wool industry and its workers in the United States. We, too, make the same plea and our organization represents the processors of wool in all stages up to yarn piece goods and blankets. Our mutual desire to stop this circumvention of our tariff policies springs from the belief that a strong, vigorous, and prosperous wool-textile industry within our own borders is in the national interest.

The Treasury-sponsored amendment would, for all practical purposes, repeal and abrogate and serve notice to the world, which already gives evidence of catching on, that our tariff rates are without meaning and can be readily circumvented through the simple device of currency manipulation.

We believe the tariff policy of the United States should be and must remain the prerogative and responsibility of the Congress of the United States. It cannot remain so if the laws it writes in definition thereof are to be flaunted by such simple schemes as currency juggling, or hobbled in their enforcement by dialectics such as we have witnessed in the case of South American wool tops.

Specifically, we urge that section 303 of the Tariff Act of 1930 be amended as follows:

1. In the first sentence of section 303 after the word "indirectly", delete comma and add "through multiple official rates of its exchange in terms of United States dollars, or otherwise," (same as lines 11–15, p. 2, H. R. 5505).

2. After word "estimated" in next to last sentence change period to comma and add "*Provided, however,* That where such bounty or grant is achieved through multiple official rates of a foreign exchange in terms of the United States dollar, then the Secretary shall determine the net amount of such bounty or grant on the basis of the export exchange rate yielding the smallest number of foreign currency units per United States dollar to the exporter."

And, finally, to correct what would be an inherent fault in section 13 of H. R. 5505, if passed in its present form respecting the assessment of ad valorem duties in cases where countervailing duties would be levied, we respectfully urge amend section 13 (H. R. 5505), amending section 402, Tariff Act of 1930, so paragraph (b) would read:

"(b) EXPORT VALUE.—The export value of imported merchandise under appraisement shall be determined as of the time of its exportation to the United States and shall be—

"(1) The market value or the price at which such or similar merchandise was freely sold or offered for sale in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States; or

"(2) In the case of merchandise subject to a countervailing duty levied in accordance with section 303 the sum of (1) above plus the amount of said countervailing; and

"(3) Plus, if not included in (1) or (2) above, the cost of all containers and coverings of whatever nature and all other charges and expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States."

Should paragraph (e) survive, it would need to be amended by adding a new (3) and changing present (3) to (4). New (3) to read:

"(3) Countervailing duty, if any, levied under section 303; and."

DEPARTMENT OF STATE,
Washington, April 24, 1952.

The Honorable WALTER F. GEORGE,
Chairman, Senate Finance Committee.

MY DEAR SENATOR GEORGE: The Department has received a note from the Indonesian Embassy setting forth the views of the Indonesian Government on H. R. 5505, an act to amend certain administrative provisions of the Tariff Act of 1930 and related laws, and for other purposes.

The Indonesian Government is particularly concerned with section 22 of the bill, which provides for the conversion of processing taxes to import taxes. With reference to this section the Indonesian Government expresses its opposition to the conversion of the processing taxes imposed under 2470 (a) to equivalent import taxes and expresses the hope that the Congress will repeal the processing taxes applicable to coconut oil, palm oil, and palm-kernel oil. A copy of this note setting forth these views is transmitted herewith at the request of the Indonesian Embassy.

In replying to this note the Department has pointed out that the objective of section 22 is to transfer the present processing taxes collected under 2470 (a) (1) and (2) to that part of the Internal Revenue Code (secs. 2490–2493) which relates to other import taxes on fats and oils without any change in the rates of the present taxes and, therefore, the modifications proposed by the Indonesian Government are not in accord with this purpose. The Department has also pointed out that section 22, contrary to the assumption of the Indonesian Em-

bassy, would make no change in the taxes presently applicable to kapok and kapok-seed oil.

The committee will note that the Indonesian Embassy refers to the difference between the tax treatment applicable to coconut oil and babassu oil. In this connection the Department has pointed out to the Embassy it does not consider that the processing taxes violate any commitment to Indonesia.

The Indonesian note under reference also refers to H. R. 6292, a bill which would remove the 3 cents per pound processing tax on coconut oil. A second note of the same date relating solely to H. R. 6292, and setting forth substantially the views on this matter contained in the note under reference, has already been forwarded to the chairman of the Ways and Means Committee of the House of Representatives for consideration in connection with that bill. A copy of the letter transmitting a copy of this note to Mr. Doughton is also enclosed.

Sincerely yours,

JACK K. MCFALL,
Assistant Secretary
(For the Secretary of State).

(Enclosures: (1) Copy of note from Indonesian Embassy, dated February 25, 1952; (2) copy of letter to Mr. R. L. Doughton, chairman, Committee on Ways and Means, House of Representatives, dated March 28, 1952.)

MARCH 28, 1952.

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

MY DEAR MR. DOUGHTON: The Department refers to Mr. Davis' letter of January 31, 1952, transmitting for its comment H. R. 6292, a bill to amend certain sections of chapter 21 of the Internal Revenue Code.

This bill would have the effect of removing the 3 cents per pound processing tax on coconut oil imposed under paragraph (a) (1) of section 2470 of the Internal Revenue Code, and applicable to the first domestic processing in the United States of oil derived from copra of any origin (whether imported as oil or pressed from imported copra). The bill would not have the effect of removing the 2 cents per pound processing tax imposed under paragraph (a) (2) of section 2470 of the Internal Revenue Code, and applicable to coconut oil which is not wholly the production of any possession of the United States or the Philippines, or oil which is not expressed from copra wholly grown in any possession of the United States or the Philippines. This bill would, therefore, continue in effect the 2 cents per pound tax preference for Philippine coconut oil (whether the production of the Philippines or pressed in the United States from Philippine copra) which was provided in the Philippine Trade Act (Public Law 371, 79th Cong.).

The major copra-producing area of the world stretches from the Trust Territory of the Pacific Islands through the Philippines and into Ceylon and India. In this area millions of people are dependent on the coconut industry for their livelihood. The price at which coconut products are disposed of in the United States and other world markets is reflected in the economic well-being of these people and the balance-of-payments position of their countries. The interest which this bill has engendered among the coconut-producing countries of the world is a measure of the importance which they attach to the removal of this tax.

Two far-eastern countries (the Republics of the Philippines and Indonesia) in particular are greatly interested in the removal of the tax. According to information from the American Embassy in Manila H. R. 6292 has received much attention in the Philippine press and in congressional circles. For example, on February 27, 1952, the foreign affairs committee of the Philippine House of Representatives reported out a proposed concurrent resolution favoring the note from the Philippine Embassy in which it was stated that President Quirino had instructed the Embassy to make known to this Government his personal interest in the question of the elimination of the 3 cents per pound processing tax on coconut oil, pointing out his concern over the danger which confronts a wide segment of the Philippine population who are dependent upon the coconut industry, and whose livelihood is threatened by recent typhoons, inability to eradicate the "cadang-cadang" pest in coconut plantations, and the burden of this tax. A copy of this note is transmitted, herewith, together with an earlier note of February 5, 1952, which sets forth in considerably more detail the arguments of the Philippine Government for the removal of this tax. In summation of the Philippine Government's position in favor of the removal of the tax, as set forth in the February 5 note, the following arguments are noted:

1. About 30 percent of the Philippine population (6 million people) depend for their livelihood on the coconut industry. Since independence, coconut products have constituted the No. 1 export item. Income derived from these products accounts for 35 to 74 percent of the total value of Philippine exports and has enabled the Philippines to import foodstuffs, clothing, machinery, and equipment, so vital to the physical rehabilitation of its people and to the restoration of their war-torn economy.

2. The protective purpose of the imposition of the 3-cent tax on coconut oil is no longer necessary (1) because coconut oil has ceased to be utilized in edible fields, particularly in the manufacture of oleomargarine, and (2) because the United States is now a net exporter of fats and oils, whereas the United States was a net importer at the time the tax was imposed.

3. The continued imposition of the tax is adversely affecting the soap industry as well as the complementary domestic fats which are used with coconut oil in the manufacture of soap.

4. This tax discriminates against coconut oil in favor of tax-free babassu oil.

5. The discontinuance of the remission of the tax to the Philippine Government since the granting of Philippine independence on July 4, 1946, has placed a heavy burden upon the Philippine economy at a time when the Philippines is exerting its utmost to improve internal conditions in the face of subversve activities by dissident elements.

6. The objective of H. R. 6292 conforms with the principle of equality in the treatment of internal taxes embodied both in the General Agreement on Tariffs and Trade and in the Philippine Trade Act of 1946. (Although the repeal of this tax is consistent with principles of the general agreement, the Department does not consider the tax to violate any commitment to the Philippines.)

7. Removal of this burden upon the Philippine economy is in harmony with the global policy which the United States Government has pursued in helping friendly nations to improve their social and economic conditions so that they can better resist the inroads of communism.

The Indonesian Government, on behalf of some 8 million of its people who are wholly or partly dependent upon the coconut industry, has also made known its views in support of the removal of this tax. A copy of a note of February 25, 1952, from the Indonesian Embassy on this subject is transmitted herewith. The reasons which prompt the Indonesian Government to urge the removal of this tax are similar to those set forth in the communication from the Philippine Government and summarized above. The following arguments, however, are made:

1. The processing taxes on coconut and other oils are held to have had a depressing effect upon world prices of fats and oils as well as on the prices of fats and oils within the United States. While the Indonesian Government is aware of the fact that a repeal of the 3 cents per pound processing tax will most likely not result in Indonesian copra or coconut oil being purchased in the United States for consumption (since the Philippine products are protected by a preferential processing tax of 2 cents per pound), the removal of the 3 cents per pound processing tax is expected to increase the world price of copra with results beneficial to Indonesian copra and exports of competing United States fats and oils.

2. The repeal of the 3-cents-per-pound processing tax on palm oil and palm-kernel oil, which is also assessed under section 2470 (a) (1) of the Internal Revenue Code, is also requested.

In addition to the significance which the foregoing governments attach to the removal of this tax the Department wishes to point out that this tax is also applicable to oil derived from copra from the Trust Territory of the Pacific Islands for which the United States, as administrating authority, is committed to promote the economic advancement and self-sufficiency of the inhabitants.

On the basis of the importance of copra and coconut oil to the economy of the Trust Territory of the Pacific Islands and the economies of the countries of southeast Asia, the contribution which removal of this tax can make toward improving the relatively low standard of living of a large part of the population in this part of the world, and its consistency with the economic policy of the United States to reduce unnecessary trade restrictions, the Department supports the amendment to chapter 21 of the Internal Revenue Code as set forth in H. R. 6292. The removal of the 3-cents-per-pound processing tax on coconut oil and not on palm oil and palm-kernel oil may be alleged by suppliers of palm oil and palm-kernel oil to result in inequalities. Accordingly, the Department would have no objection to the removal of the processing tax on these

two additional oils. In this connection the Department notes imports of palm oil and palm-kernel oil are relatively insignificant in comparison with imports of coconut oil. Also, imports of palm oil for certain industrial uses, accounting for most palm-oil imports in recent years, are exempted from the 3-cents-per-pound processing tax.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

JACK K. MCFALL,
Assistant Secretary
(For the Secretary of State).

(Enclosures: Copies of notes from Philippine Embassy dated February 5 and March 4, 1952; also copy of note from Indonesian Embassy dated February 25.)

WASHINGTON, D C., *February 25, 1952.*

No: 947–EC

The Ambassador of the Republic of Indonesia presents his compliments to the honorable the Secretary of State and has the honor to advise him that he has followed with deep interest the discussions and hearings before the House of Representatives, and more in particular its Ways and Means Committee, in connection with paragraph 22 of H. R. 5505 (customs simplification bill), which paragraph provides for conversion of the United States processing tax on various vegetable oils into an equivalent customs duty on the oil or on the oil-bearing material.

When the bill came up for discussion a motion was submitted by the Representative from Arkansas, calling for a complete repeal of these processing taxes instead of their conversion into an import duty. However, this repeal was declared out of order by the afore-mentioned committee, as such measure was not considered germane to the purpose of a customs simplification bill.

The House of Representatives kept paragraph 22 in the bill when it approved H. R. 5505 shortly before it went on recess.

The matter of elimination of these processing taxes, either through conversion into a duty or by their repeal, is again coming before Congress during its eighty-second session.

Not only will the customs simplification bill be discussed, but also a bill (H. R. 6292), submitted by Representative Havenner from California on January 29, which latter bill has as its purpose the repeal of the $0.03 preferential processing tax on coconut oil, but which maintains the $0.02 processing tax on coconut oil of non-Philippine origin as well as the processing tax on the other oils presently subjected to this levy.

In connection with the above situation the Government of the Republic of Indonesia thinks it of importance to presently point out to the American Government Indonesia's interest in this matter and, furthermore, to express the hope that a complete repeal of all processing taxes—therefore, not on coconut oil only—will result from action taken by Congress during the current session. As will be explained elsewhere in this note, the Indonesian Government would greatly regret and in fact deplore the change of these processing taxes into an import duty.

The commodities coming under paragraph 22 in which Indonesia is particularly interested, are: copra, coconut oil, palm oil, palm kernels, palm-kernel oil, kapok seed, and kapok-seed oil.

Copra, coconut oil

Prewar (1936–41) Indonesia had an export surplus of copra of 430,000 tons annually. Among its export products, copra—according to value—took the third place.

Presently copra again ranks third in importance amongst Indonesia's export products. In 1951 Indonesia's exports totaled approximately 465,000 tons at a value equivalent to approximately $121,053,000, against a total export value of about $1,180,000,000.

The Ambassador of the Republic of Indonesia is aware that a repeal of the $0.03 processing tax most likely will not result in Indonesian copra being purchased for U. S. A. consumption, since the Philippine product is protected by a differential processing tax of $0.02 per pound on coconut oil processed from non-Philippine copra. Still, the repeal of the $0.03 United States levy on coconut

oil can be expected to favorably affect the price of copra received by the Philippines for its exports to the U. S. A. A higher price obtained for Philippine copra in the U. S. A. will accordingly affect the price of Philippine copra sold to other destinations (because the price level of Philippine copra is determined by the price obtained in the U. S. A. as that country—for all practical purposes—takes more than half of the Philippine copra export). Consequently, Indonesian copra exported to those other destinations will equally benefit from a United States tax repeal. Each dollar-cent increase in the price of coconut oil (about equal to an $0.006 increase for copra) means an increase in the annual income of Indonesian copra growers or farmers to an amount approximately equivalent to $12 million (calculated over the total Indonesian copra production).

It is, therefore, clear that the existence of these United States processing taxes has greatly impoverished and still is impoverishing countries producing copra (and other oils, or oil-bearing material, as will be explained further in this note); and it is exactly those countries whose standards of living still are so low that the United States of America has pledged itself to provide them with economic and technical aid in order to raise their far beneath normal standards of living, which are hurt most by these United States levies.

An increase in proceeds from copra will thus be extremely beneficial—

First, to the population of large areas in Indonesia, which are mainly, or to a considerable extent, dependent on the cultivation of copra. A larger prosperity in such regions will greatly favor their political and social stability. Roughly 8 million people in Indonesia are wholly or partly dependent on the cultivation of copra.

Second, to the foreign exchange income of Indonesia and to its foreign trade. Increased foreign exchange proceeds tend to promote imports. Insofar as those proceeds are turned into consumer goods, thus enlarging the availability of such goods, they may bring about lower prices of these goods, which again may tend to lower the cost of living and consequently the cost of production. A lower cost of production will make Indonesia's copra and other export commodities more competitive in world markets, thus tending to increase or at least maintain the level of exports; as some of the Indonesian export products are about to or have been eliminated from world markets because they have outpriced themselves from such markets owing to their high cost of production, one may see how important the problem of lowering the cost of production is to Indonesia. There also is the fact that a larger availability of consumer goods tends to bring about a larger production of export commodities which, again, increases Indonesia's foreign exchange income and purchasing power abroad.

It has been mentioned earlier that a tax repeal would not enable Indonesia to sell its copra to the United States of America, due to the existence of a $0.02 preferential tax in favor of the Philippine product. However, it should be mentioned here that this preferential situation will cease to exist in 1974, so that Indonesian copra at that time can enter the United States of America at an equal basis with the Philippine product.

Palm oil, palm kernels, palm kernel oil

Prewar (1936–41) Indonesia exported about 200,000 tons of palm oil, approximately 60 percent of which went to the United States of America. Owing to the years of Japanese occupation and those of strife afterward, the production of palm oil—which is an estate product—received a very severe blow from which it only is recovering slowly. Production is now back to not even 50 percent of prewar. Nineteen hundred and fifty-one exports totaled about 75,000 tons at an export value approximately equivalent to $23,000,000. Very little of this production is presently finding its way to the United States of America (for stockpile purposes and the tin-plate industry only). It is hoped, however, that in the next few years the Indonesian palm-oil industry will have completely recovered and that palm oil will again be prominent among Indonesia's export products (prewar, palm oil ranked fifth in importance among Indonesia's export commodities). When this product has reestablished its former level of production, Indonesian producers must look for market expansion and a repeal of the processing tax would facilitate the return of Indonesia's palm oil to the United States market.

An increase in proceeds from palm-oil exports—in case of repeal of the United States processing tax—would prove extremely beneficial to—

(*a*) The 35 estates in Indonesia which are presently producing palm oil and to those which are not back in production, but which may again operate when the circumstances are more inducive to resumption of operations. Also

many of the palm-oil estates have become marginal producers, and a higher price for their product may give them a new lease on life.

(*b*) To laborers working on the palm-oil estates and in the factories. A larger income for the estate will undoubtedly reflect on the prosperity of its workers, or may prevent their release in such cases where an estate is about to be closed due to unprofitable production. Reopening of estates which are presently closed, will mean employment opportunity for many.

(*c*) As in the case of coconut oil, higher proceeds from palm oil also mean an increased availability of foreign exchange, consequently, of import goods, which may reduce the cost of living and cost of production in Indonesia, thus stimulating exports with all the afore-mentioned beneficial effects connected therewith.

If a large part of our palm oil finds its way to the United States of America, the availability of dollars to Indonesia will greatly increase, which is due to reflect on the flow of exports from the United States of America to Indonesia.

Prewar (1936–41) exports of palm kernels totaled 33,660 tons. Total 1951 exports were approximately 18,000 tons at an amount equivalent to approximately $3,200,000.

Although kapokseed is not as important to the economy of Indonesia as the afore-mentioned commodities, such exports are adding to Indonesia's foreign exchange income and may well increase in importance when market expansion in the United States of America becomes feasible.

Prewar (1936–41) Indonesia exported 12,275 tons of kapokseed; in 1951 these exports totaled approximately 9,000 tons at an amount equivalent to approximately $700,000.

It is realized that coconut oil, palm oil, palm-kernel oil, and kapokseed oil compete, to a certain and varied extent, with some of the United States domestic fats and oils; although in postwar years such competition has become much smaller and—in some cases—has entirely ceased to exist.

It is the opinion of the Government of Indonesia, however, that whatever competition there presently remains, it should give no cause to the U. S. A. to maintain its protection on the home product in the form of a (converted) import duty or a processing tax on oils and oil-bearing material of foreign origin. This opinion is based on the following:

Primo: Even in the years immediately following the establishment of these processing taxes the United States of America has more harmed than supported its economy by instituting these "protective" measures. Establishment of these taxes meant that shippers of copra, coconut oil, edible palm oil, etc., to the United States of America received an approximately equivalent amount less for their export product and in connection with the importance of the United States market as an outlet for these commodities, their world prices declined conformably. Consequently, all fats and oils competing with these commodities in world markets, were equally affected. Among these were lard and cotton-seed oil exported by the United States of America; although the United States of America at the time when the processing taxes were established, was a net importer of fats and oils, it had a considerable export surplus of lard and cottonseed oil (of the first commodity about one-third of the United States production was exported). Since the export surplus was considerable, the domestic price of these products experienced the influence of the lowered world price of those oils with which lard and cottonseed oil had to compete abroad, and the resulting trend reflected on prices of other domestic fats and oils.

Also, the United States of America—due to the fact that its competition abroad had become more difficult as a result of lowered prices—was in many instances no longer able to maintain its high level of its fats and oils exports, thus losing much-needed markets abroad to competing commodities, for example, whale oil (the whaling industry received a big boost when American lard, cottonseed oil, etc., became less competitive on world markets) which caused domestic surpluses in the afore-mentioned commodities, with the already mentioned unfavorable effect on prices.

Therefore, even in the years when the United States of America—on balance—was an importer of fats and oils, these processing taxes "boomeranged back" at the price the United States of America obtained for its exported products as well as at the price of its domestic fats and oils. Now that the United States of America is a very considerable net exporter of fats and oils, the foregoing is even more true.

It, therefore, seems that repeal of the tax on copra, coconut oil, palm oil, etc., would not only serve the interest of the exporting countries, but also—and not in the least—the interest of the United States of America. The fact that it was the representative of Arkansas, the principal cottonseed growing State, who during the Eighty-first session of Congress, submitted the repeal motion before the House Ways and Means Committee, shows that this "domestic oil" bloc no longer fears competition from foreign oils domestically, and even has its reasons for endeavoring to facilitate the entry of such oils into the United States of America.

Moreover, there also is the fact that if these commodities, through processing taxes or import duties, are prevented from finding a market in the United States of America, they have to find an outlet elsewhere, thus making it more difficult for the United States fats and oils surplus (approximately 1 million tons) to find a market abroad. Therefore, competition between United States fats and oils and oils of other origin will remain, whether such competition occurs inside or outside the United States of America, and the only result of a United States processing tax, or customs duty, is that such competition finds place on a lowered price level.

Secundo: It may seem not entirely consistent with United States of America's world leadership in attempting to reduce international trade barriers that now that the opportunity has presented itself to change the present situation with regard to these internal taxes, endeavors from United States official side are directed at conversion of these taxes rather than at their complete repeal.

Tertio: Also, the United States of America presently is a country which maintains a considerable level of exports and recent history has shown the seriousness of adverse economic repercussions which such country may cause when it endeavors to hamper the flow of its imports.

Quarto: Last but not least—and as mentioned before—there seems to be a certain amount of inconsistency in the fact that the United States of America is engaged in various programs to assist in improving the economy of countries like Indonesia, for instance the ECA program, whereas simultaneously it is maintaining measures the impoverishing influence of which to the dollar earning capacity far surpasses the favorable effects of its foreign-aid programs. At its present level of exports, abolition of the United States processing taxes on coconut oil, palm oil, etc., may mean to Indonesia an increase in its annual foreign exchange income of an amount approximately equivalent to $20 to $25 million. (Domestic proceeds will increase considerably more since also the domestically sold product will advance in value). When the prewar level of production of palm oil will again be reached, abolition of those taxes may mean an increase in the foreign exchange income of Indonesia of an amount approximately equivalent to $30 to $35 million.

As mentioned earlier in this note, the Government of the Republic of Indonesia would much deplore if the aforementioned taxes would be converted into equivalent duties. The Ambassador of Indonesia, therefore, wishes to express the hope of the Indonesian Government that paragraph 22 will be eliminated from H. R. 5505 when final action is taken with respect to this bill.

One of the reasons—besides those mentioned earlier—why Indonesia is against conversion of these taxes is that in such cases United States importers must pay this levy, whereas presently the processing tax is being paid by the first American processor. For copra importers only, this would already require an additional outlay of many millions of dollars annually. It is clear that since in the case of conversion the financial stake the importer has in each purchase will increase conformably, such conversion must have a restraining influence on the trade "position" such importer is willing to take. A declining trend in this direction would mean less incentive for importers to import and sell these commodities in this country, which would result in a diminished trade between the United States of America and countries which produce the commodities concerned.

Another reason why the Indonesian Government is against conversion is that in such case the present levy will be put in a form which is much more "stagnant" or "perpetual" than its present form. In this respect reference should be made to paragraph 22, section (d) of H. R. 5505 which prevents any tariff reduction (under sec. 350 of the Tariff Act) to be applied to the (converted) duty. The result of conversion would, therefore, be that the (converted) duty on copra,

palm oil, etc., cannot be subjected to tariff negotiations and revisions. Consequently, producers of these commodities not only would suffer from such conversion because of the reasons mentioned in the former paragraph, but such producers would be further penalized by seeing this levy being put in a (presently nonexistent) category of unrevisable[1] customs duties. Therefore, if contrary to the hope of the Government of Indonesia, paragraph 22 of H. R. 5505 is accepted by the Congress, it would like to, at least, see section (d) eliminated.

Considering the matter from a tariff technical side, it seems rather difficult and impracticable to establish a duty or rather duties on copra, equivalent to the $0.03 processing tax on coconut oil, when there exist up to seven different copra grades in the various producing countries, each of them with a different oil content.

The proposed conversion into a duty seems all the more inconsistent when we consider that babassu oil, which is at least equally competitive as Indonesia's aforementioned oils, has been bound in various United States trade agreements (lately by GATT, Geneva, 1947) on the duty- and tax-free list; whereas, moreover, through its point IV program for Brazil, the United States of America presently is engaged in promoting the production of babassu oil in that country. Therefore, there not only is the fact that the United States of America—through its tariff and tax bindings—has taken strongly discriminatory action against countries producing a practically similar oil; but the United States of America apparently does not fear competition from this oil, which as far as its competitive qualities are concerned, comes in the same category as the Indonesian oils. It is the feeling of the Government of Indonesia that such discrimination ought to be removed by repeal of the processing tax.

In conclusion, and summarizing the above, it may be said that the Republic of Indonesia is deeply interested in seeing the Eighty-second Congress taking favorable action with respect to the repeal of the processing taxes on copra, coconut oil, palm oil, palm kernels, palm-kernel oil, kapokseed and kapokseed oil, whereas the Government of the Republic of Indonesia, bearing in mind the interests of its 8 million nationals involved in this matter, would very much regret the conversion of such taxes into an equivalent import duty on such oils or oil-bearing material.

STATEMENT SUBMITTED BY FRANK L. KING, EXECUTIVE SECRETARY FOUNTAIN PEN AND MECHANICAL PENCIL MANUFACTURERS' ASSOCIATION, INC.

It is imperative for the protection of a vast number of United States manufacturers and merchandisers that the Senate Finance Committee give serious consideration to the effects which would ultimately follow approval by the Senate of section 321 of H. R. 5505, popularly known as the customs simplification bill. This section authorizes an increase in the limitation on duty-free mail imports from $1 to $10 per package. This increase has been favored by the United States Treasury as a money-saving device because, according to the Treasury, it costs approximately $1.59 on an average for the Bureau of Customs to clear individual incoming shipments.

The Fountain Pen and Mechanical Pencil Manufacturers' Association, Inc., is opposed to the passage of the section of the bill authorizing this increase from $1 to $10 on the value of duty-free incoming mail shipments. Approval of this section not only would affect the fountain pen and mechanical pencil business in this country but other lines of business which also have foreign competitors shipping products into this country which would be covered by this increase on the limitation of duty-free mail.

One of the functions of customs tariffs is to protect the United States economy by prohibiting the importation of products which would undersell United States products. The application of duty not only increases the landed cost of the imported merchandise to a competitive price on the American market but also provides revenue for the United States Treasury.

The United States should not permit an increase in the duty-free importation of foreign-made merchandise which not only undersells American-made merchandise but is not subject to certain Federal taxes. There are numerous mail-order houses in the United States, both large and small, which deal in items generally under $10 in value. They would be directly affected by foreign com-

[1] Unrevisable under the Trade Agreement Act.

petition as foreign-made goods can be produced in the same standards of quality at lower productions costs.

At the present time there is in existence a foreign mail-order business primarily originating in Great Britain advertising foreign-made products. These advertisements not only show the cost price of the merchandise but the amount of duty which would have to be paid. In most instances this cost-plus-duty price is below a fair price for the same articles manufactured in the United States. By raising the limitation on duty-free mail the disadvantage to American manufacturers and mail-order houses would be even greater.

The raising of the limitation on duty-free mail to $10 is an invitation to foreign sellers and United States importers to import into the United States quantities of identical or similar articles in a series of mail shipments. The value of the merchandise shown in the documentation of the shipments will be fictitious and only part of the actual value. This is a practice being used throughout the world today to circumvent a variety of regulatings governing the importation and exportation of merchandise.

An increase in the valuation of duty-free mail not only would increase the present disadvantage to some American manufacturers and mail-order firms but also would be an invitation to other foreign firms to enter into the business of selling by mail to United States consumers. Japan in particular would be ready to step into this business in the United States with regard to fountain pens. At the present time that country has not been too successful in selling Japanese pens in the United States in competition with United States manufacturers on a quality basis. The Japanese pen manufacturers, on reviewing their 1950 and 1951 figures on their domestic and foreign business, have requested the Japanese Ministry of Industry and Commerce to grant them the right to use gold in the manufacture of pen points so that they might better compete against the foreign pen manufacurers. Japanese production costs are far below those in the United States. The wholesale price on a Japanese fountain pen with a gold nib can be estimated at approximately $1 a dozen. Even with our present import duties on fountain pens, such prices would be below the prices that a United States manufacturer of fountain pens would be forced to ask. Permitting Japanese fountain pens to be imported duty-free in small lots would make this unfair advantage even greater.

It has been said that the increase in the limitation of duty-free mail would be a money-saver because it costs approximately $1.59 on an average for customs to clear an individual shipment. Would the saving of $1.59 be more than the duty that would have been collected on the average shipment under $10? On a shipment of $5 valuation, with an ad valorem duty of 40 percent, the revenue would be $2. The question might also be asked whether the total cost of handling of all shipments between $1 and $10 valuation at the present time is more than the total duty collected on these same shipments.

For these reasons, the Fountain Pen and Mechanical Pencil Manufacturers' Association, Inc., urges the members of the Senate Finance Committee not to increase the value of duty-free incoming mail shipments above the present $1 limit.

JOSEPH MAGNIN CO., INC.,
San Francisco, Calif., April 21, 1952.

Senator WILLIAM KNOWLAND,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR KNOWLAND: You are no doubt aware of the proposed new United States customs law which will allow foreign merchandise of all types and values to $10 to come into the United States duty free.

This would be particularly dangerous to retailers and stores closely adjacent to the Canadian and Mexican borders. We all realize that it would adversely affect our business, in that we would be in competition with stores which not alone sell merchandise duty free but whose costs of doing business is less than that in the United States.

This will bring about unfair competition and we join with other retailers in urging you to oppose this law.

Sincerely yours,

CYRIL MAGNIN, *Vice President.*

STATEMENT OF RICHARD P. WHITE, EXECUTIVE SECRETARY, AMERICAN ASSOCIATION OF NURSERYMEN, INC., WASHINGTON, D. C., ON H. R. 5505

My name is Richard P. White, executive secretary of the American Association of Nurserymen, Inc., 635 Southern Building, Washington, D. C.

I appear before this committee to present a viewpoint in regard to section 11 of H. R. 5505, a proposal "to amend certain administrative provisions of the Tariff Act of 1930 and related law, and for other purposes."

Section 11 proposes certain amendments to section 321 of the Tariff Act of 1930. My testimony is directed specifically to section 321 (b) (2).

This subsection proposes to exempt articles from duty provided the aggregate value of all articles in a shipment does not exceed $10, and provided the articles are intended for personal or household use of the consumer and are not for sale. The purpose of this section is obviously, and as the amendment states, to avoid expense and inconvenience to the Government disproportionate to the amount of revenue collected. The objective to be sought is a commendable one, but there are certain considerations which must be given to the proposal in view of the plant-quarantine regulations of the United States Department of Agriculture under the Plant Quarantine Act of 1912, International Plant Quarantine 37, and the regulations issued pertinent thereto.

I understand that this bill, H. R. 5505, has not been submitted to the Department of Agriculture for consideration and report. In our view, it should be submitted to the Department of Agriculture for a report at least upon this section.

The United States Department of Agriculture has now established a system whereby certain types of living plant materials are inspected by United States Government inspectors in foreign lands for determination of their apparent freedom from plant pests. This does not preclude the possibility of reinspection at ports of entry in the United States, as well as fumigation of the plant material as a precautionary measure against the introduction of plant pests not now present or widely distributed within the United States. It is true that the regulations under Plant Quarantine 37 require certain external evidences placed upon containers which include plant materials subject to port-of-entry inspection and fumigation.

The practical effect of the exemption proposed in section 11 of H. R. 5505 starting on page 15, line 18 of the proposal would be to permit large quantities of shipments of plant materials from foreign countries direct to the consumer in this country via international parcel post and by both air and ship. The result would be that the United States Department of Agriculture would fail to intercept large numbers of these very small shipments, and if they did intercept them all, the personnel would not be adequate to take care of the task involved in inspection and fumigation at the ports of entry.

This would result, we feel, in reducing the effectiveness of our international plant quarantine procedure and would eventually result in the introduction and establishment of plant pests, both insects and diseases, not now known to exist or not widely distributed in the United States. When such establishments were discovered, Congress would be requested to appropriate considerable sums of money either for eradication purposes or for control purposes under the system of domestic-plant quarantines. In addition to that, various nursery cultures in this country would be jeopardized with heavy losses of both plan material and operating capital due to the domestic quarantines which would be used as a method of prevention of spread, cost of control procedures, etc.

It is my understanding as indicated above that this proposed legislation has not been submitted to the Department of Agriculture for their consideration and we feel very strongly that it should be on account of the above situation which would be permitted. We would like to suggest, therefore, that H. R. 5505 be submitted to the Department of Agriculture for their consideration before action is taken on it by the Senate Finance Committee.

BOOK MANUFACTURERS' INSTITUTE, INC.,
New York 18, N. Y., April 28, 1952.

Re hearings on H. R. 5505—Customs Simplification Act.

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: The only practical protection which the American printer and his employees has today against low-priced competition is the requirement in the United States copyright law that to obtain copyright protection such material must be manufactured in the United States.

Tariffs are now so low that no protection against low-wage-rate countries is afforded and more and more competition from foreign publishers is being experienced. Foreign and domestic publishers are waiving copyright protection for some of their works and having them made abroad and then importing them into the United States. We protest the exemption granted in section 11 of H. R. 5505, "for articles imported otherwise than on the person or in the accompanying baggage of an individual arriving in the United States and the aggregate value of all articles in the shipment is not over $10.00, if the articles are intended for personal or household use of the consignee and not for sale, or $5.00 in any other case."

This exemption would enable a foreign or an American publisher to establish a book publishing mail order business whereby books could be manufactured abroad in low-wage printing and binding plants and imported duty free in competition with American printers. The c. o. d. provision of the section would not act as a deterrent, for the books could be ordered and paid for in advance of shipment.

Attached are copies of two letters which illustrate how very real competition from such substandard wage countries is in spite of the manufacturing clause of the copyright law.

Sincerely yours

J. RAYMOND TIFFANY.

MARCH 13, 1952.

Hon. EMANUEL CELLER,
House Office Building, Washington, D. C.

DEAR MANNY: I am sending you under separate cover a copy of a book called, The Spendthrifts, published by Farrar, Straus & Young, which seems to confound all the arguments of the publishers that American book manufacturers would lose nothing by the change of the copyright law.

As you know, the argument has been that publishers would import chiefly technical works that would only enjoy a small sale here among scholars, research workers, etc. Now I find that here is an American publisher importing novels that have been completely manufactured abroad.

The Spendthrifts, for example, was printed in Austria and then the sheets were sent to England for binding and finished books were sent to America for distribution.

Now, under the proposed copyright bill these books would come in here and would be protected, and where in the world are we American book manufacturers going to be if we have to compete with this type of situation?

American publishers can't even afford to print in Chicago and ship sheets to New York for binding because of the costliness of such a procedure, and yet they can ship sheets all over Europe and then send the bound books across the seas to us and obtain copyright protection.

Upon inquiry to the publisher, I find that this particular book is not the only book of fiction that he has had done this way. He has imported other novels and sold them here successfully. Apparently this publisher has no copyright on these books and apparently he doesn't care and is perfectly willing to risk piracy.

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Now if he is not interested in even copyright protection on his novels, then certainly we should have manufacturing protection on those books that publishers do think worthy of copyright protection.

Sincerely,

SIDNEY SATENSTEIN.

[From the Publisher's Weekly, March 29, 1952]

SIMPKIN MARSHALL HEAD BUYS BRITISH BOOK CENTRE

Capt. I. R. Maxwell, managing director of Simpkin Marshall, Ltd., *the major British wholesale bookseller, has purchased controlling interest in the British Book Centre in New York from the Dunstead Trust and has announced a vigorous program of future expansion of the Book Centre's operations in the United States, projects which, if successful, will alter the entire character of British book distribution in this country.* [Emphasis added.]

Interviewed in New York shortly before flying back to England last week, Captain Maxwell outlined for PW his plans for the Book Centre. *"In giving 100 percent complete and efficient service to the American book trade,"* Captain Maxwell said, *"we will guarantee that any British publication will be in New York within 7 days of the time it is published in England. As soon as we can acquire additional warehouse space, we will stock books of all British publishers, not just those that have in the past been represented here by the British Book Centre.* [Emphasis added.] In other words, the Book Centre in New York will become a replica of Simpkin Marshall and will be backed up by Simpkin's as far as availability of stock is concerned." The British Book Centre here is not, however, under the financial control of Simpkin Marshall or any other firms controlled by Captain Maxwell.

His intention, furthermore, is to reduce the conversion factor—currently 22 cents to the shilling—at which British books are sold in this country. [Emphasis added.]

Other elements of Captain Maxwell's plan for the British Book Centre are the establishment of a foreign department which will accept orders for any European publication; a publishing operation to bring out here scholarly and nonfiction titles also published by other firms in the United Kingdom; and the creation of the British Book Club to distribute monthly selections chosen by an Anglo-American board of judges.

Trade and consumer advertising of British books will be increased, Captain Maxwell told PW, and the British Book Centre will publish a monthly trade bulletin for bookstores with imprint for bookstore distribution, Books To Come, being taken over by Simpkin Marshall from the Central Office of Information, and the British Books of the Month, an established Simpkin Marshall service.

A magazine subscription department will also be set up within the British Book Centre.

The British Book Centre in New York was originally established by B. T. Batsford in 1949; controlling interest was acquired by the Dunstead Trust last year (PW, April 14, 1951). Ronald Freelander, formerly general sales manager of the McGraw-Hill Publishing Co., Ltd., London, continues as executive vice president of the British Book Centre. Kenneth MacKenzie remains secretary-treasurer and sales manager.

The Honorable W. W. Astor, Ronald Tree, and Walter Pierre Courtauld, who had interests in the Dunstead Trust and the center, continue as minority stockholders of the center.

Captain Maxwell bought Simpkin Marshall from Sir Isaac Pitman & Sons last fall (PW, December 1, 1951). He is already known here, primarily to libraries, as managing director of Lange, Maxwell & Springer, Ltd., a firm specializing in the export of British and foreign books and magazines of a technical and scientific nature. Early this year Captain Maxwell formed a new company, Simpkin's Sole Agencies, Ltd., a subsidiary of Simpkin Marshall, to handle the books of those publishers whose trade distribution is handled solely by Simpkin Marshall. The Simpkin Marshall operations will, within 2 months, be transferred to new quarters—four times the size of the firm's present location—at 242 Marylebone Road NW 1. Captain Maxwell is currently stirring up wide discussion in Great Britain of his proposed international direct mail order service for publishers based on a master list of 1 million names, broken down into specific categories.

THE SECRETARY OF COMMERCE,
Washington 25, D. C., April 29, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance,
United States Senate,
Washington, D. C.

DEAR MR. CHAIRMAN: This is to advise you of my views with respect to H. R. 5505, a bill to amend certain administrative provisions of the Tariff Act of 1930 and related laws, and for other purposes.

At the time early in 1951 when this legislation was introduced in the House of Representatives, this Department submitted a favorable report thereon, and subsequently, on August 10, 1951, I testified personally before the House Ways and Means Committee to the same effect. The bill now before you, as passed by the House, omits certain provisions that were in the original bill. Even without these provisions, however, H. R. 5505 is in my opinion highly desirable legislation and should be enacted, if at all possible, during this session of the Congress.

We favor particularly those provisions which would directly simplify customs procedures and indirectly reduce the cost of customs operations. These include the general valuation provisions; the proposed increased use of informal entries; the proposed higher administrative exemptions for imports of small value; the free entry provisions for travelers and noncommercial exhibitions, temporary entry of samples and other similar articles; the provision on correction of errors; and the provisions dealing with supplies for vessels and aircraft, and with the signing and delivery of manifests. In addition, there are those provisions which would modify present unnecessarily arbitrary procedures in connection with special marking requirements; undervaluation penalties; and the treatment of commingled merchandise. It is important to note that all these provisions are concerned with the mechanics of importing, and would not change the present import duty structure.

This Department is, of course, vitally interested in this legislation because of our concern and responsibility for the problems of business, and we are aware that the burden and costs of customs formalities fall first on American importers. H. R. 5505 is, however, a somewhat unusual piece of legislation, in that it commends itself to almost all segments of our economy. By improving and simplifying customs procedures, it would benefit our import trade. It would also in some degree serve the consumer, and from the viewpoint of Government, it would improve and possibly make less costly our customs administration and thereby be of benefit to the taxpayer.

One final consideration favoring enactment of such legislation at this time may be found in its small but not insignificant contribution to the objectives of our foreign aid programs. To the extent that simplification of our customs practices encourages foreign firms to take advantage of commercial possibilities in the United States market, it should reduce the cost and shorten the period of assistance which the United States is giving to various friendly foreign countries to help them get on a self-supporting basis.

We are advised by the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

If we can be of further assistance to you in this matter, please call upon us.

Sincerely yours,

CHARLES SAWYER, *Secretary of Commerce.*

STATEMENT OF ROY A. CHENEY, PRESIDENT, UNDERWEAR INSTITUTE, NEW YORK, N. Y.

I am Roy A. Cheney and am president of the Underwear Institute, a voluntary association representing approximately 80 percent of production of underwear and fabric gloves in the United States.

I would like to call attention of this committee to the real objection we have to section 321 of H. R. 5505, now being considered.

By its title, this bill is designed to simplify present customs procedure. There is no objection to this. But in section 321 of this bill there is a provision that would invite a mass of foreign competition for American manufacturers. It is inconceivable that the author of the legislation appreciated the danger that lies in this one section.

Our manufacturers of underwear in this country know competition well. When one enters this field he does so with the knowledge that to succeed he must be able to serve the consumer with goods they want and at a price they are willing to pay. If he fails to so serve, he cannot stay in business. This we know. However, American manufacturers cannot compete with foreign underwear manufacturers under the circumstances that would be set up by this bill.

We must maintain manufacturing plants. In order to serve our customers we must go into the market and buy materials and supplies in quantities to satisfy demands, and make up and manufacture styles and colors that will appeal.

Besides the above we must hire help to man our mills and factories, promote the sale of goods, for, after all, the economy of this country prospers not because of the goods our underwear mills and glove factories produce alone, but rather upon what is sold across the counters of our wholesalers and retailers.

Next comes the burden of taxes that are levied by the Federal, State, and local governments. Many States and many municipalities have sales taxes. Also, when we import foreign-made materials we must pay duty upon them before we can offer them for sale in the shape of finished garments.

Contrast this situation with that of the alien operator, if this bill is passed. According to section 321 of H. R. 5505, a foreign operator, no doubt from a country that has been the recipient of billions in aid, partially paid by the taxes upon American manufacturers, wholesalers, and retailers, can advertise and sell in this country goods selling for $10 a shipment and mail them to our customers duty-free. The irony of this situation is that we would find some of the tax dollars we have paid being used to damage us.

A foreign operator could place an advertisement in a newspaper or magazine in the United States and offer to sell underwear, gloves, lingerie, and a host of other items. These items could be priced upward of $10. Realize that the alien advertiser does not maintain quarters in this country. He does not pay any real-estate, income, or other taxes. He pays no duties. He does not maintain a selling force. His only expense would be the advertisement.

The members of our association representing glove and underwear manufacturers feel that this type of competition should not be permitted and we pray that this committee will erase this harmful section. An amendment to the House bill was considered by some to remove the harmful features of section 321. This amendment would prevent c. o. d. shipments under this bill. But, gentlemen, I can assure you that any foreigner who could offer for $10 a sweater, that an American manufacturer could not produce for less than $12 or $14, would not be discouraged by the ban against c. o. d. shipments.

We honestly believe that this section is unfair and unjust and places upon several segments of our economy a double load. The retailer, wholesaler, and manufacturer would be forced to help pay the bill for foreign aid and then be placed in jeopardy by foreign competition created by this proposed legislation.

Please let me urge you to a serious consideration of this request. The members of our association sincerely hope that the committee will delete section 321 of H. R. 5505.

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D. C., May 1, 1952.

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: We would like to have inserted in the hearing record this brief statement of the position of the National Milk Producers Federation on H. R. 5505 relating to customs simplification. The federation, as you know, represents some 450,000 dairy-farm families and the cooperatives which they own and operate and through which they act together to process and market their milk.

Our members are not concerned directly with customs procedures and formalities. The general principle of customs simplification, if limited to that, appears to be sound and desirable. Protection of domestic industry should be accomplished by direct means and not through cumbersome customs procedure.

H. R. 1535, as introduced, contained several objectionable features, mostly matters other than customs simplification, and the federation appeared at the hearings before the House Ways and Means Committee in opposition to some of those features.

We opposed the reduction of the tariff on adulterated butter and filled cheese. In connection with the proposal to change the present 3-cent processing tax on coconut oil, palm oil, and palm-kernel oil to an import tax insofar as it applies to imported raw products, we asked that the status of the tax under the trade agreements be left unimpaired. To that end, we recommend that the processing tax continue to apply to domestic products and that the prohibition in the bill against modification of the import tax through trade agreements be retained in the final enactment.

All of these matters were taken care of by the House committee. In addition, other provisions of H. R. 1535 not relating directly to customs simplification were deleted when the clean bill (H. R. 5505) was reported and passed, and a section was added to make it clear that the passage of the bill would not indicate approval or disapproval of the General Agreement on Tariffs and Trade.

The federation would oppose any change in H. R. 5505 which would undo the above improvements made in the House.

We are not sure of the effect of subsection (e) of section 22 of H. R. 5505 (p. 41), relating to taxes imposed under section 2491 of the Internal Revenue Code where the tax would be in contravention of a trade agreement.

If this subsection is retained in the reported bill, we would like the committee to consider adding a statement in the report to the effect that this subsection would not affect the treatment of the import taxes set up in lieu of processing taxes by section 22 of the bill.

The dairy farmers in this country are desperately in need of protection against imports from countries where wages and standards of living are lower. Uncertainty over the effectiveness of such controls after July 1 is already having an adverse effect in relation to prices, planning, and commercial storage. If section 104 of the Defense Production Act is not extended, our domestic source of supply of a vital and essential food will be impaired at a time when we can least afford to rely on foreign sources. But, as indicated above, we believe that issue should be met directly and not through opposition to customs simplification.

Sincerely yours,

(Signed) Chas. W. Holman,
(Typed) CHARLES W. HOLMAN, *Secretary.*
NATIONAL MILK PRODUCERS FEDERATION.

CARPET INSTITUTE, INC.,
New York City, April 30, 1952.

Memorandum re customs simplification bill (H. R. 5505).

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

I. STATEMENT

GENTLEMEN: This memorandum is submitted by the Carpet Institute, Inc., which represents over 90 percent of the domestic manufacturers of wool carpets, rugs, and floor coverings.

We are in favor of any action which would simplify technical procedures in connection with the administration of the customs laws. However, we do not believe that any action should be aken which would directly or indirectly result in the equivalent of a reduction in present greatly reduced tariff rates of duties.

Your committee is, of course, familiar with the fact that there have been many trade agreements negotiated with foreign countries under the Trade Agreements Act of June 12, 1934, as extended from time to time. The rates of duty prescribed in the said act of 1930 on wool carpets and rugs have been reduced in some cases as much as 75 percent and any action which might indirectly result in a further lowering of these duties would be harmful to our industry.

We filed a memorandum with the Committee on Ways and Means dated September 7, 1951, with reference to the bill which was then pending before that committee and which was designated as H. R. 1535. The committee, however, when reporting said H. R. 5505 to the House on October 1, 1951, stated in part on page 2 of its report:

"Your committee held extensive hearings on H. R. 1535 and deliberated at length on it in executive sessions. H. R. 5505 was introduced as a clean bill and reflects your committee's decisions on, and amendments to, H. R. 1535. The present bill, as a result of these hearings and deliberations, is truly a customs simplification bill.

"The need for customs simplification was acknowledged by all witnesses who appeared before your committee. Their testimony on the provisions now contained in H. R. 5505 differed, in general, only in technical and drafting details."

In our memorandum filed with the Ways and Means Committee with reference to said H. R. 1535 we strongly objected to a proposal to amend section 201 (a) of the antidumping act of 1921. It read in part: "Whenever the Secretary of the Treasury (hereinafter called the 'Secretary'), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be *materially* injured, or is prevented or *materially retarded* from being established, * * * " he may make a public finding of dumping. We made an extensive argument in support of our suggestion that the word "materially" should be deleted. We are pleased to note that in H. R. 5505 "materially" was deleted. We are not repeating our argument in this memorandum in support of our proposition because it is our opinion that the elimination of the word "materially" is satisfactory to all parties. We urge, however, your committee not to insert it in the pending bill. [Emphasis ours.]

II. COMMENTS ON PARTICULAR SECTIONS

1. Section 13. Value (p. 17) : Said section 13 proposes to amend section 402 of the Tariff Act of 1930 by eliminating the basis of "foreign value."

We are particularly interested in this section because it eliminates "foreign value" as one of the bases to be considered under section 402 of the said Tariff Act of 1930 by the United States appraisers when appraising the values of imported merchandise subject to ad valorem rates of duty. Your committee undoubtedly knows that under said section 402 the said appraisers first have to determine whether there is a "foreign value" and/or an "export value." If both values exist in accordance with the definition set forth in said section 402, the appraisers must take whichever of the two values is the higher. If there isn't any foreign value, then they must determine if there is an export value. It is our opinion that the elimination of "foreign value" as one of the basis of consideration would not only create greater uncertainty as to the real price of a product but might also be used indirectly by foreign manufacturers interested in building up export markets.

The domestic manufacturers now have a certain degree of protection which would be denied to them if said section 13 of H. R. 5505 is enacted into law not only by the elimination of foreign value as one basis of consideration but also by the other definitions proposed by said section 13. The proposals in said section 13 appear to be particularly important to our industry because it is reasonable to assume that foreign manufacturers of wool carpets, rugs, and floor coverings might greatly increase their export trade and the values of such articles would have to be determined according to their export values, in the absence of the foreign value provision. Foreign manufacturers, for example, might get export values considerably below the actual values of the merchandise in order to gain an increased United States market. When the greatly reduced rates were applied to such fictitious export values it might produce a situation distinctly unfair to American manufacturers.

Said section 13 of the bill also proposes new definitions for the other bases of value as now defined in said section 402 of the Tariff Act of 1930, as amended. The primary value to be considered for the purposes of the Tariff Act would be "export value" as redefined. Without discussing each definition pertaining to value we wish to point out, however, that the term "Freely sold or offered for sale" (on p. 22, lines 17 to 25, inclusive, of H. R. 5505) has been defined by the proposed amendment so that any restrictions imposed by law on prices, such as price controls, shall not be construed to prevent the finding that goods are "freely sold or offered for sale." Thus the existence of a governmental price control will not interfere with the establishment of any of the values to be used under the tariff act if so amended. Also there is a definition of "purchasers at wholesale" (p. 23, lines 7 to 14, inclusive, of H. R. 5505) which will clarify the finding of values, eliminating the present requirement that goods be offered for sale "to all purchasers" which did not always mean "purchasers at wholesale." Refinements have also been made in the definition of "ordinary course of trade" (p. 23, lines 1 to 6, inclusive, of H. R. 5505) and "usual wholesale quantities" (p. 24, lines 15 to 19, inclusive, of H. R. 5505) which are supposed to lead to a more accurate value, or a value which more nearly approximates the actual value of the merchandise.

We think it is important to call to the attention of the committee that if section 13 is amended to provide for various definitions which differ from those

in the act of 1930, as amended, many of the thousands of court decisions handed down over the past sixty-odd years might be of little or no value in interpreting said section 402 of the Tariff Act of 1930, as amended by the proposed section 13. Furthermore, it is reasonable to assume that if said section 13 becomes law, there would be many cases brought thereunder and new decisions rendered. Many years might elapse before such decisions could serve as precedents.

2. Section 17. Undervaluation (p. 27): Said section 17 is titled "Amendment of Entries and Duties on Undervaluation." Said section 489 is proposed to be amended so as to provide, among other things, that the special duty for undervaluation shall not be assessed unless the consignee "* * * shall have failed to furnish the appraiser, before that officer has signed his report of value to the collector, all information required by customs officers which is relevant to the value of the merchandise and available to him at the time of entry or within a reasonable time thereafter, and all such information that is so available to the person, if any, in whose behalf the entry was made. * * *" Thus, if the undervaluation is in good faith, and the importer has furnished the information so required, there would be no need for an amendment of the entry, and the special duty for undervaluation would not be assessed.

This is a radical departure from the present law. Said section 489 of the Tariff Act of 1930, as amended, provided, in substance, that an importer must enter his goods at his peril, so to speak, in the matter of the values of articles subject to ad valorem rates of duty. In other words, the additional duties are assessed ipso facto if the appraised values exceed the entered values. Such additional duties cannot be remitted "* * * nor payment thereof in any way avoided * * *" except in the case of a clerical error upon the finding of the Secretary of the Treasury "* * * or in any case upon the finding of the United States Customs Court, upon a petition filed * * * that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise. * * *"

The customs courts have decided many cases involving petitions for the abatement or refund of additional duties under the present section 489. In most of such cases importers have been able to prove that the entry of merchandise at values less than the appraised values was without intention to defraud the Government or to deceive the appraiser. Therefore, such additional duties were ultimately refunded. However, the increased duties were retained by the Government.

To summarize, our view is that section 489 of the Tariff Act of 1930, as amended, acts as a deterrent to carelessness or indifference by an importer when deciding upon the values at which merchandise, subject to ad valorem rates of duty, is to be entered. Furthermore, under the proposal as set forth in H. R. 5505 a review of undervaluation cases, so-called, could still be made by the United States Customs Court and that such court could order the remission of such duties if it finds that undervaluation was made "* * * without any culpable negligence or intention to conceal or misrepresent the facts of the case or to deceive the appraisers as to the value of the merchandise." This language is found in subsection (b) on page 29 (lines 6 to 9, inclusive) of the bill. Our opinion is that if this language should be incorporated in any law which may be enacted it would seem to relax somewhat the obligation of an importer. In other words, it might make it possible for him to more easily prove good intentions than under the language of section 489 of the present Tariff Act, which reads in part, "* * * without any intention to defraud the revenue or to conceal or misrepresent the facts."

3. Section 13. Value (p. 17): We discussed under 2. Undervaluation, beginning on page 6 of this memorandum. However, we desire to call particular attention to subsection (d) which purports to amend section 503 of the present Tariff Act, which proposal is on page 30 of the bill (lines 12 to 16, inclusive). It restates in effect that duty shall be paid on the basis of the final appraised values, and therefore the entered values are not to be considered. Said section 503 of the present Tariff Act, if amended by a proposed subsection (d) would then read as follows insofar as subsections (a) and (b) of the present section 503 are concerned:

"(a) Except as provided in section 562 of this Act (relating to withdrawal from manipulating warehouse) and in subdivision (b) of this section, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be *the final appraised value.*" [Emphasis ours.]

"(b) For the purpose of determining the rate of duty to be assessed upon any merchandise when the rate is based upon or regulated in any manner by the value of the merchandise, the final appraised value shall (except as provided in sec. 562 of this Act) be taken to be the value of the merchandise."

The result of this amendment, if adopted, would be that in cases where an importer enters goods at a value higher than that at which it is finally appraised, the final appraised value shall be taken to be the value of the goods, and the importer would not be penalized in any way for entering them at a higher value; and furthermore the difference between the higher duty paid and the duty ultimately assesssed will be refunded to him upon final liquidation of the entry. We feel that said section 503 should not be amended as proposed by said section 17 (d) of H. R. 1535.

4. Section 20. Conversion of currency (pp. 33 to 36, inclusive): Section 20 (a) of H. R. 1535 proposes to amend section 522 of the Tariff Act of 1930 by bringing the methods of converting foreign currencies for customs purposes in line with the articles of agreement of the International Monetary Fund. At present the primary basis for currency conversion is the value of foreign gold coin as published quarterly by the Secretary of the Treasury. The amendment proposed provides instead for the current publication, by the Secretary of the Treasury, of a list of the par values of foreign currencies which are maintained pursuant to the articles of agreement of the International Monetary Fund, or pursuant to any other international agreement entered into by the United States. All currency conversion must, if possible, be based upon the par value so determined.

Under the present law (sec. 522) if the par value of a currency as established by its gold content should vary by 5 percent or more from the value measured by the buying rate in New York at noon on the day of exportation of the merchandise involved, then such buying rate is to be taken as the basis for conversion. The proposed amendment provides that in case there be no par value as determined by the International Monetary Fund or by other international agreement, then the value to be used for converting is the buying rate of the foreign currency in New York at noon on the date of exportation.

Under the present practice, where the gold standard has largely disappeared, the par value based upon gold content is not used, but in place thereof, the current buying rate in New York is usually employed in converting currency. Based on the record we question the efficacy at the present time of the determinations of par values set by the International Monetary Fund. The rates which have been set thereunder have been the rates which the countries involved have set themselves, and it seems that such rates would be thereby arbitrary, and would not reflect a true and accurate value. A far more accurate or actual value would appear to be attainable by using the buying rate at New York, as is done at the present time, and therefore we can see no reason for departing from section 522 of the present Tariff Act of 1930 as amended.

Moreover, in case no rate has been set by the International Monetary Fund, then the rate to be used, in accordance with the proposed amendment, is the buying rate at New York at noon on the date of exportation of the merchandise involved, the same basis as is now being used when the rate based upon gold content cannot be employed. It seems that in a great many cases, therefore, the buying rate at New York would be used under the amendment, just as that rate is now being used under the present section 522. This amendment, therefore, does not seem to be justified.

The proposed amendment also provides for the application of a rate of exchange where the Federal Reserve bank certifies that more than one rate of exchange exists for the merchandise in question. At the present time such a situation is amply covered by the procedure followed since the decision of *Barr* v. *United States* (324 U. S. 83, 65 S. Ct. 522 (1945)). That case held that where there exists both an "official" rate and a "free" rate of exchange for British pounds, the rate to be used in converting to United States dollars should be the rate applicable to the merchandise in question, i. e., the rate at which the importer obtained the pounds used in his purchase of the merchandise. Since the importer, in that case, purchased pounds at the "free" rate of $3.475138 the Court held that such rate should be used instead of the "official" rate of $4.035. Customs officials since that decision have been governed accordingly, and the rates used now appear to be as realistic as it is possible to achieve. Mr. Justice Douglas, in writing the majority opinion of the Supreme Court in *Barr* v. *United States*, supra, said in part:

"This history [of sec. 522] makes clear the search which has been made for a measure of the true dollar values of imported merchandise for customs purposes

which was accurate * * * and at the same time administratively feasible and efficient. The formula finally selected is dependent on the actual value of the foreign currency in our own money. The rate for the foreign exchange with which the imported goods are purchased is recognized as the measure of value of the foreign currency; the use of that rate reflects values in United States currency which are deemed sufficiently accurate to serve as the measure of the valuation of the goods for purposes of the ad valorem tax.

"We would depart from that scheme if we were to read section 522 (c) as saying that on a given date only one buying rate for a specified foreign currency could be certified by the Federal Reserve Bank of New York or proclaimed by the Secretary of the Treasury" (324 U. S. 89, 90).

* * * * * *

"We assume that the 'official' rate was the all-inclusive rate and could have been used in payment of exported goods of all kinds. But section 522 (c) means to us that that buying rate is to be used which is in fact applicable to the particular transaction. To look to other transactions for the buying rate is to make a valuation of a wholly hypothetical import not a valuation of the actual one before the collector of customs * * * The language of section 522 (c) read against the background of these statutes indicates to us that Congress undertook to provide in each case the rate which gives the closest approximation to the value in dollars of the imported merchandise" (324 U. S. 91, 92).

To sum up our position, the tying of conversion rates to the International Monetary Fund is a marked departure from present practice which has been built up over many years, and which is familiar to all persons engaged in foreign trade. The current practice of converting foreign currency is effective, and approaches the problem in a realistic manner. The case of *Barr* v. *United States*, supra, establishes a guide in the case of multiple rates of exchange which can be followed, and is being followed, with satisfaction. Any change in conversion methods at this time would seem to lead to confusion and would not give domestic manufacturers any more definite criteria to be followed in determining such conversion. In addition, it might lessen the protection which domestic manufacturers now receive, even under the present low rates of duty. We strongly urge, therefore, that section 20 (a) of H. R. 5505 not be enacted into law.

III. CONCLUSION

As stated, we are heartily in favor of any action which will further simplify the administration of customs procedures. However, because the rates of duties on carpets and rugs have been reduced in some cases as much as 75 percent from certain rates in the Tariff Act of 1930 and because imports have shown remarkable increases in spite of existing tariff duties, we are concerned that such simplification of administrative procedures be purely that and not provide an indirect route for circumventing in any way existing tariff duties. We urge that these points be given consideration in connection with the proposed bill.

Respectfully submitted.

CARPET INSTITUTE, INC.
By MERRILL A. WATSON, *President.*

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.,
New York 7, N. Y., April 29, 1952.

MRS. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR MRS. SPRINGER: Reference is made to our telephone conversation yesterday afternoon, and certain specific changes in language in H. R. 5505, the Customs Specification Act, recommended by Mr. Fred Bennett during his testimony before the Senate Committee on Finance, on Wednesday, April 23, 1952.

Attached herewith you will find the two specific changes referred to by Mr. Bennett. I would appreciate it if you would include these recommendations in the record of hearings on this proposed legislation.

Thanking you for your cooperation, I wish to remain

Very truly yours,

VINCENT J. BRUNO,
Manager, Import Division, World Trade Department.

RECOMMENDED CHANGES IN LANGUAGE IN SECTION 17 OF THE CUSTOMS SIMPLIFICATION ACT, H. R. 5505

(1) On page 27, line 13, amend section 17 (a) to read as follows:

"SEC. 17. (a) Section 487 of the Tariff Act of 1930 (U. S. C., 1946 edition, title 19, sec. 1487) is amended by deleting therefrom ', or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisement,', and substituting therefor ', or at any time prior to the lodging of the appraiser's report of value with the collector,'."

(2) On page 28, lines 3 and 4, delete "all information required by customs officers", and substitute therefor "such information as is requested in writing by customs officers."

BOUDIN, COHN & GLICKSTEIN,
New York 19, N. Y., May 2, 1952.

UNITED STATES SENATE, COMMITTEE ON FINANCE,
Senate Office Building, Washington, D. C.

(Attention: Mrs. Elizabeth B. Springer, Chief Clerk.)

GENTLEMEN: Enclosed please find statement by the undersigned, submitted on behalf of the Pocketbook Workers Union. The undersigned testified orally before the committee on April 28 and was granted permission to file a written statement.

Enclosed you will also find corrected transcript.

Very truly yours,

BOUDIN, COHN & GLICKSTEIN.
By SAMUEL HARRIS COHEN.

STATEMENT MADE BY SAMUEL HARRIS COHEN, ATTORNEY FOR THE POCKETBOOK WORKERS UNION, A. F. OF L.

Honorable sirs, I appear as attorney for the Pocketbook Workers Union, affiliated with the International Handbag, Luggage, Belt & Novelty Workers Union, A. F. of L., in opposition to the proposed amendment in section 321 of H. R. 5505.

This union has about 12,000 members who work in the ladies' handbag industry situated in the greater area of metropolitan New York City. These members work for some 335 employers who manufacture handmade or quality handbags, and for some 150 employers who manufacture personal leather goods. Fifty-five percent of the said handbag production of the United States is produced by the members of the Pocketbook Workers Union. The 55-percent figure is misleading in that almost 90 percent of the higher-priced handbags is made in metropolitan New York. The out-of-town companies for the most part produce the less expensive handbags retailing from $1 to $5. Quality bags retail from $7.50 and up, with an average of from $10.50 to $12.50.

The union for which I speak is experiencing at this time the worst business conditions it has ever had since about 1935. From the legal work required we get an insight into the depressed business conditions in New York. In the last 2 years my firm has been concerned with the collection of wages, vacation, and holiday pay and unemployment-insurance benefits. For the first time in recent years employers have been asking for, and receiving, an extension of time in which to remit to the union holiday and vacation pay and to pay wages to the employees.

As stated before, the New York market primarily produces the quality handbags. It is this part of the industry that is most directly affected by the unfair imports of handbags. The proposed change in section 321 of H. R. 5505 will aggravate to a great extent the unfairness of the foreign competition to the quality handbag employer and worker, by encouraging imports of handmade quality purposes. The person of means is the purchaser of these handbags and also is the foreign traveler. The proposed amendment would encourage this group of citizens to purchase their handbags abroad, or through mail orders.

Without the benefit of this proposed tax gift the foreign producer has many advantages. The wages of the hand pocketbook makers in the foreign countries are estimated to be from 30 percent, in countries like France, Germany, and Austria, to 40 percent in countries like England and Italy of the American wages. The foreign worker works from 48 hours to 54 hours per week as compared with the 37½ hours worked by the members of the Pocketbook Workers

Union. The productivity of the foreign worker is about the same as the American worker because we are talking about a handmade product. The American employer only outproduces the foreign producer in the quantity of output in the machine-made handbags retailing from $1 to $5 per bag. In addition, the collective bargaining agreement provides for welfare benefits, 2 weeks' vacation, measured by employment in the industry rather than for the individual employer because of the seasonal nature of the work, paid holidays, and numerous other fringe benefits. None of these terms of employment, with rare exceptions, is enjoyed by the foreign pocketbook worker. In addition to this unequal competition, this bill proposes to give a gift of duty taxes for handbags up to $10 per bag if for personal use, and $5 per bag if for resale.

In addition, the employers of the members of the union are faced with the normal American way of doing business, and the cost thereof. Because of many good reasons, particularly sales promotion, seasonal clearance and mark-downs, the average retail mark-up is about 40 percent.

Furthermore, the American producer of handbags is most unfairly burdened with the 20 percent excise tax. In the field of all wearing apparel up to $10, which includes the quality handbags which we are discussing, only handbags of wearing apparel are so discriminatorily taxed. A lady's handbag is as much a part of a woman's dress as her hat or her shoes. In addition, in New York and many other States, employers are faced with a 2 to 3 percent sales tax. None of the said factors and costs items are part of the production costs of the foregin producer.

The duty-free admission of handbags up to $10 means a mail order method of selling. This further burdens the American producer because the mark-up in the mail order business is about 20 percent. This unequal burden will be further agravated by the fact that the mail order business of foreign origin, which will be fathered by this tax exemption, directly will compete with the quality hand-made bag producers. The American bag mail-order producer selling in the cheaper market does not compete with the quality hand-made bag manufacturer.

Congress has often given lip service to the need of encouraging the small-business man. I say lip service in view of the record of more and more large scale and monopoly production being the norm for American business, especially in the last 50 years. The report of the Select Committee on Small Business, House Document No. 559, Eighty-first Congress, gives the true picture of this monopoly development. In this instance, by defeating the proposed amendment, this honorable committee can encourage small business. The quality hand-made bags that are threatened by this bill are produced by small companies. Only 5 employers in the New York market employ over 100 employees. About 125 employers employ 20 or less employees. It may be said that the amount of handbag imports may only total a few million dollars. The loss of this amount of business to small companies, already hard-hit by the 20 percent excise tax, means the difference between solvency and bankruptcy.

The women of America who purchase the quality hand-made bags are already boycotting the American bags because of the 20 percent excise tax. On a $10 purchase, the tax is $2 and on a $20 purchase, the tax is $4. The American handbag consumer has refused to pay this singular and unreasonable tax. The attempt of this bill to admit hand-made bags, duty-free, amounts to, in the opinion of the union and its 12,000 affected members, a massacre and destruction of the American craft of making quality hand-made bags. It means the development of an unfair competing development in foreign countries.

While the bill provides for exceptions as the Secretary of the Treasury shall prescribe, this is not very reassuring. While it may be legal for Congress to abdicate its law-making functions to administrators, experience in the customs field especially has shown that administrators do not exercise their discretion. We believe that the figures set forth in the bill, of $10 and $5, will not be modified by virtue of the exception provisions.

The part-time employed and underpaid workers of the Pocketbook Workers Union are confident that their views will be favorably received by this esteemed committee. They trust that this prejudicial bill will not be permitted to leave the confines of this committee.

Please accept our sincerest thanks for your courtesy in hearing the plea of the quality hand-made-bag workers of America.

U. S. CUSTOMS INSPECTORS' ASSOCIATION,
PORT OF NEW YORK,
New York, N. Y., April 29, 1952.

Hon. WALTER F. GEORGE,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: Reference is made to the proposed Customs Simplification Act which is being considered by the Senate Committee on Finance. This act would amend certain provisions of the Tariff Act of 1930 and related laws.

The members of this association are concerned about the language of the proposed new section 646 of the Tariff Act of 1930, as set forth in section 21 of the proposed Simplification Act under the title "Customs Supervision," reading as follows:

"SEC. 646. Customs Supervision.

"Wherever in this Act any action or thing is required to be done or maintained under the supervision of customs officers, such supervision may be direct and continuous or by occasional verification as may be required by regulations of the Secretary of the Treasury, or, in the absence of such regulations for a particular case, as the principal customs officer concerned shall direct."

The official analysis of the proposed act states that section 21, Customs Supervision, was to apply to section 304 and section 562 of the Tariff Act of 1930. However, the language of the proposed Simplification Act as set forth in the proposed new section 646 of the 1930 Tariff Act, as embodied in section 21 of the proposed act, does not state any such limitation. It plainly states that "Wherever this act any action, etc."

Our association is of the opinion that section 21 should be eliminated in its entirety. Such relaxing of customs supervision is contrary to the intent of the law, a potential threat to the revenue and to the proper functioning of customs inspectors, and other groups of customs officers.

Section 21, if allowed to remain in its present form, would change all existing law providing for customs supervision. It would substitute spot checks and paper controls for the physical supervision which experience has shown is required to property safeguard the revenue and prevent smuggling.

We respectfully request that your committee consider our recommendation that the proposed new section 646 of the Tariff Act of 1930 be eliminated from the Customs Simplification Act.

Respectfully submitted,

JOHN J. MURPHY. *President.*

NEW ORLEANS, LA., *May 1, 1952.*

Hon. WALTER F. GEORGE,
Chairman, Senate Finance Committee,
United States Senate,
Washington, D. C.

Mr. Chairman and gentlemen of the committee, it is my understanding that the Senate Finance Committee has just concluded public hearings on the bill known as H. R. 5505, the Customs Simplification Act of 1951.

Because of the existence of a long-standing inequitable condition affecting the operators of United States Customs bonded warehouse space in this country, I have taken the liberty of dispatching this letter to you and the members of the committee, via air-mail special delivery, in the hope that you will see fit to amend H. R. 5505 as outlined below.

The problem of operators of United States Customs bonded warehouse space for many years with respect to general-order storage has briefly been this: In many instances, after imported merchandise arrives in the United States, no duty is paid thereon and free wharf time has elapsed, the collector of customs in the particular locality orders this imported merchandise placed in general-order storage.

The selection of a warehouse is at the discretion of the collector of customs but, in any event the public warehouseman selected must be the bona fide operator of United States Customs bonded warehouse space, with classes 3 and 8 privileges, duly licensed by the collector, having met all requirements of law.

After the appropriate order has been issued by the collector of customs the imported merchandise is transferred from wharf into the United States Customs bonded warehouse space of the public warehouseman.

If this imported merchandise is not reexported and duties have not been paid on it after it has remained in storage for a period of 1 year, the collector of customs is obligated to sell it at a public auction, in an effort to assure the United States Government of the value of the duties thereon.

Experience has proven that when the sale of general-order merchandise has taken place and the Government has been reimbursed for the value of duties thereon, often no funds are available from the sale of this merchandise to pay the operator of United States Customs bonded warehouse space for his accrued charges against the merchandise.

In all equity, it is unreasonable to expect a public warehouseman to maintain United States Customs bonded warehouse space without assurances that, where general-order merchandise is sold for payment of duties, he will be made whole on his accrued charges such as storage, handling-in-and-out of warehouse, drayage, etc. Nonpayment of the warehouseman's charges means that the warehouseman is performing 1 year of service free to both the importer and the Government.

On behalf of the American Warehouseman's Association, merchandise division, the writer respectfully requests that you, and the members of the committee, approve an amendment to H. R. 5505 which would provide for the prior payment of accrued charges to a public warehouseman who operates United States Customs bonded warehouse space, classes 3 and 8 privileges, in cases where merchandise placed in general order is sold.

These views would have been submitted to the committee in person by the writer, but, due to the press of urgent business, the writer was unable to come to Washington prior to the conclusion of your hearing.

A prompt reply will be greatly appreciated.

Respectfully submitted.

JAY WEIL, JR.,
Chairman, Committee on Bonded Warehouses and Foreign Trade,
American Warehousemen's Association, Merchandise Division.

STATEMENT OF NATIONAL WOOL GROWERS ASSOCIATION, ON H. R. 5505

The association, as representative of the raw-wool producers of this country, has for some time been greatly concerned at the large quantity of wool tops imported from Uruguay and Argentina which are sold here at prices less than the cost of the raw wool. Such a condition, obviously, reduced the demand and depresses the market for domestic wool.

Both Argentina and Uruguay have multiple rates of currency exchange in terms of the United States dollar which enable the processors of tops in those countries to obtain a very much more favorable rate of exchange than applies to the sale of raw wool. As a result of this preferential rate in their domestic exchange, the wool tops from these countries are able to under sell American-made tops. The volume of imports of such tops has caused serious disturbance to all branches of the wool industry.

Under section 303 of the Tariff Act of 1930, the so-called countervailing duty statute, the Secretary of the Treasury must impose a countervailing duty equal to the amount of the grant or bounty bestowed by a foreign country on products imported into the United States.

The association is complaining against the successful efforts of foreign countries to nullify the United States duty rates through currency manipulation. We are not asking this committee to prohibit or curtail imports on which the legal duty is paid; we are, however, requesting that effective action be taken against imports which escape the payment of proper duties through the manipulation of foreign currencies.

On February 21, 1952, the attention of the Secretary of the Treasury was called to the existence of this wool-top situation, and it was pointed out that under section 303 it was mandatory on him to levy a countervailing duty equal to the amount of the grants or bounties bestowed by virtue of the foreign multiple-exchange rates. This letter was signed by 25 Members of the Congress, who, after reciting the provisions of the statute, stated, "It is difficult to see how language can be more explicit." A copy is appended hereto, marked "Exhibit A." Since that time there has been no action by the Secretary, and after hearing the testimony of Mr. Frank A. Southard, Jr., Special Assistant to the Secretary of the

Treasury, before this committee on April 22, it is apparent that it would be unrealistic to assume that the Secretary has any present intention of taking action under the statute.

This matters of tops from Argentina and Uruguay was first presented to the Treasury by the National Association of Wool Manufacturers in November 1950 (House hearings on H. R. 1535, p. 689). On December 14, 1951 (House hearings, p. 690) the Commissioner of Customs advised the National Association of Wool Manufacturers that it "was apparent" that grants or bounties within the meaning of section 303 did not result from the multiple exchange rates used by Argentina and Uruguay. Furthermore, he added, that he did not believe that Congress ever intended that section 303 take into consideration the field of foreign currencies.

When the National Association of Wool Manufacturers questioned his decision, it was reaffirmed, thereby demonstrating that it was neither an off-hand nor an ill-considered opinion. Therefore, as late as January 30, 1951, the Treasury, after examining the situation, concluded that section 303 could not be invoked against imports subsidized through multiple-exchange rates. In connection with this firm conviction expressed in January 1951, it is interesting to read Mr. Southard's statement to this committee on April 22:

"As I have indicated earlier, the Treasury has always felt that it is possible for a foreign country to utilize a multiple-exchange-rate system in order to bestow such bounties or grants."

Mr. Southard's use of the word "always" is hardly reconcilable with the previous opinion of the Commissioner of Customs. Mr. Southard's reasons for failure to invoke the statute are that investigations have not been completed—investigations that concern themselves solely with foreign motives, and ignore the disastrous impact of the practice on American industry. Instead of discharging the mandatory duty under section 303, refuge is supplied by pointing out the difficulties and injustices which would result to the foreign country if the Treasury incorrectly assumed that the multiple rate was intended for foreign-trade advantage rather than domestic adjustment within the offending country. In this connection, Mr. Southard conjures the following thesis:

"When a country shifts to a system of multiple rates there may be a partial devaluation of the currency of the country in question or there may be a deliberate taxing or other burdening of a portion of the exports, or both of the elements may be present. If a bounty or grant is involved, it will be in some of the cases of partial devaluation."

In other words, Mr. Southard feels that such truism presents a dilemma which should preclude saying that a bottle is "half empty" lest someone claim that it is "half full." He then marshals an array of injustices and consequences that would ensue to the foreign countries if the obverse were mistaken for the reverse. For fear of such error, the Treasury confines itself to the treadmill position of further investigations, additional information, and continuous studies.

With refreshing realism, the Tariff Commission ignored such self-imposed dilemmas and concluded that the Argentine multiple-exchange system was designed for the specific purpose for which it is obviously used. In a report entitled "Economic Controls and Commercial Policy in Argentina," the Tariff Commission states:

"*Exchange control.*—During the past decade the most important instrument for the regulation of Argentine foreign trade has been the official control of foreign-exchange transactions. This control, which has had varied objectives has constituted but one phase of a national political and economic program perhaps more comprehensive and more aggressive than has been employed in any other country of Latin America. Exchange-control measures have been employed to stabilize the currency, to conserve and allocate exchange balances, to provide exchange for essential Government payments abroad, to raise revenue for the National Government, to protect selected domestic industries, to subsidize certain export products, and to extend preferential treatment to imports from countries with which Argentina has an export balance of trade."

No tax statute, no matter how ambiguous, ever imbued the degree of caution in the Commissioner of Internal Revenue which section 303 arouses in other parts of the Treasury. The Commissioner of Internal Revenue is ever alert to construe a tax statute in favor of the United States, and shifts the burden of proving error to the citizen who disagrees.

The reluctance of the Treasury to comply with the clear mandate of section 303 apparently was first based on the belief expressed by the Commissioner of Customs; namely, that Congress never intended it to encompass foreign-cur-

rency situations. (See *Woolworth* v. *United States*, 115 Fed. (2) 348, to the contrary.) Whatever justification existed for such assumption was considerably diluted by the letter to the Secretary of February 21st (exhibit A), in which 25 Members of Congress expressed their personal opinion to the contrary. Granted that such letter does not constitute official congressional action, it is nevertheless a unique manifestation of uniformity of opinion by Members of both parties. There has not been a single dissent to that opinion expressed by any Member of Congress.

It is clear, therefore, that the refusal of the Treasury to act cannot be soundly based on any genuine doubt as to congressional intent. If such hesitancy were so actuated or founded on a seeming ambiguity in the statute (the language of which would be difficult to duplicate for clarity), then it would have been only logical for Mr. Southard to have asked the committee for a clarifying amendment. On this subject he was silent and, instead, endorsed an amendment designed to interpose an additional hurdle to relief by requiring an industry to show serious injury in the event that the Treasury were ever to conclude that a grant or bounty existed.

The National Wool Growers Association therefore recommends—

1. That appropriate language be inserted in section 303 of the Tariff Act of 1930, as amended, whereby the existence and extent of a grant or bounty bestowed by multiple-exchange rates of the foreign currency can be readily ascertained through the application of practical tests, with resort to the courts in cases of delays, or refusals.

2. That in section 2 (c), H. R. 5505, all words after line 15 on page 2 through line 15 on page 3 should be stricken.

STATEMENT OF JOHN BRECKINRIDGE, ON BEHALF OF THE CALIFORNIA FIG INSTITUTE, WITH RESPECT TO THE CUSTOMS-SIMPLIFICATION BILL (H. R. 5505)

My name is John Breckinridge, of the law firm of Pope Ballard & Loos in Washington, D. C.

Mr. A. E. Thorpe, managing director of the California Fig Institute, regrets very much that he was unable to be present at the hearing on April 29 when he was scheduled to appear as a witness. He appreciates the opportunity of submitting a statement for the record in lieu of personal testimony and has asked me to prepare a statement for him.

The California Fig Institute is an association of 100 percent of all fig growers. The purpose of the California Fig Institute was, at its inception in 1935, and is now, to provide a means of cooperative effort on the part of growers to solve problems of mutual interest. The institute does not have any control or authority over the marketing of figs.

In order to conserve space in the record we will not include a detailed statement of facts concerning the fig industry but will refer the committee to the transcript of the recent hearings before the Tariff Commission in connection with its application for relief under section 8 (a) and section 7 of the Trade Agreements Extension Act of 1951. The hearings were held by the Tariff Commission from April 22 through April 25. We hope that the committee will request the Tariff Commission to furnish it a copy of the transcript of these hearings. They contain a full and detailed description of the fig industry and its import problems.

In view of the committee's continuing interest in the way the various customs and trade-agreements laws are being administered, I am confident that the committee or members of its staff will find a review of this fig case very interesting. It has developed into somewhat of a test case since it is the first case in which a perishable agricultural commodity has requested relief under section 8 (a) and section 7 of the Trade Agreements Extension Act of 1951. The manner in which the case has been handled by the Department of Agriculture and by the Tariff Commission and the ultimate outcome, I am sure, will be of great interest to the committee. If the committee or members of its staff should study this case, we would be most pleased to furnish any additional information desired.

The fig growers are in sympathy with the objective of simplifying and streamlining various customs procedures and practices, and some of the sections in the bill before the committee would seem to accomplish such objective. However, there are certain sections which have no conceivable relation to the question of procedural simplification. On the contrary, some sections of the bill are

substantive changes in policy which would work to the disadvantage of the fig growers, as well as other agricultural producers in the United States. We are specifically opposed to section 2, dealing with countervailing duties (sec. 303 of the Tariff Act of 1930), and the Antidumping Act of 1921, section 13, dealing with the valuation of imports for customs purposes, and section 20, dealing with the conversion of foreign currencies for customs purposes.

All three of these sections are substantive changes in policy and have no relationship to the avowed purpose of the bill, which is the simplification of customs procedures and practices. We feel that sections 2, 13, and 20 are not germane to a customs-simplification bill. We hope that the committee will eliminate these sections in reporting the bill to the Senate floor.

In order to avoid undue repetition, the fig growers would like to endorse the testimony of John Breckinridge on behalf of the dehydrated-onion and garlic industry and the testimony of Mr. H. Warner Dailey on behalf of the Pin, Clip, and Fastener Association, both of which dealt with the same three sections of the bill to which we are opposed and gave adequate reasons therefor.

The American fig growers have always had serious difficulty with unfair import competition and they are very much concerned that the laxness in the administration of existing laws designed for their protection, such as the Antidumping Act and the countervailing-duty statute, has resulted in a semiofficial license to foreign producers and/or government to subsidize and/or dump exports into the United States market at will.

We at the appropriate time and at the appropriate place desire to make certain recommendations which would strengthen these and other statutes designed for the protection of American industries. However, we do not think our suggestions would be germane to a customs-simplification bill any more than are those suggestions of the administration involving substantive changes in foreign-trade policy.

However, we feel that this committee could be of great service to American industries by including in their report on this bill an admonition for the administration to more vigorously administer the Antidumping Act of 1921 and the countervailing-duty statute for the benefit and protection of American producers. We feel that the committee already has adequate evidence that the administration has ignored the protective purpose of these statutes and that many American industries are suffering very greatly thereby.

We are most pleased that the letter from the committee advising us that we would be permitted to appear at the hearings stated that the committee had decided to limit the consideration of amendments to sections in the bill to those dealing purely with the simplification of customs procedures and practices. We hope that the committee will eliminate sections 2, 13, and 20 from the bill.

The CHAIRMAN. That is the end of the hearings, gentlemen. Thank you very much.

(Whereupon, at 11:45 a. m., the hearings were adjourned.)

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