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## MARKING OF NEW PACKAGES FOR IMPORTED ARTICLES

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Mr. BYRD, of Virginia, from the Committee on Finance, submitted the following

### R E P O R T

[To accompany H.R. 5054]

The Committee on Finance, to whom was referred the bill (H.R. 5054) to amend the Tariff Act of 1930 with respect to the marking of imported articles and containers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

#### PURPOSE

The purpose of H.R. 5054 is to amend section 304 of the Tariff Act of 1930, as amended, to provide that when articles, imported in containers required to be marked, are repackaged in the United States and offered for sale, the new package shall be marked with the name of the country of origin.

#### GENERAL STATEMENT

Section 304 of the Tariff Act of 1930, as amended, requires that articles of foreign origin imported into the United States be marked in such a way as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Section 304(a)(3) authorizes the Secretary of the Treasury to except from this requirement articles that for various reasons cannot or need not be marked. Eleven categories of exceptions are identified in this subsection. Section 304(b) requires that, with respect to such excepted articles, the container in which such articles are packaged shall be marked.

H.R. 5054 would add a new subsection (c) to section 304 providing that, if an imported article whose container must be marked under the provisions of subsection (b), is removed from that container, repackaged, and offered for sale in the new package by an importer, jobber, distributor, dealer, retailer, or other person, such new package

shall be marked, subject to the applicable provisions of section 304. Under paragraphs (1) and (2) of section 304(a) of the Tariff Act, as amended by the bill, the Secretary of the Treasury may by regulations (1) determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin, prescribe any reasonable method of marking, and prescribe a conspicuous place on the package where the marking shall appear, and (2) require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article. Failure to mark the package as required under the bill will make the article subject to seizure and forfeiture. Since the new subsection (c) is a part of the customs law and relates to imported merchandise, the customs laws (including those provisions of the Tariff Act of 1930 which relate to enforcement) apply in respect of violations (or alleged violations) of the new subsection. Thus, for example, the provisions of title IV of the Tariff Act relating to reporting of seizures (sec. 602), prosecution (sec. 604), judicial condemnation (sec. 608), summary forfeiture and sale (secs. 609 and 612), disposition of proceeds (sec. 613), remission or mitigation of penalties (sec. 18), and compensation to informers (sec. 619) apply in respect of seizures and forfeitures under the new subsection.

The House Ways and Means Committee, before unanimously reporting the bill, approved an amendment which would limit the importer's liability to the repackaging done by them or on the importer's order. In other words, the importer would not be held responsible in any way after the goods pass from his custody and control.

The Senate Finance Committee received a number of inquiries and objections to the bill from those repackaging such items as spices, mixed nuts, tea, and similar products. In most of these instances there was fear that the adoption of the bill would cause undue hardship even though customary procedures were followed and there was no intent to conceal either the country of origin or that the mixed products were imported.

The committee announced hearings on the bill but found it necessary to cancel them because of an early meeting of the Senate. However, statements were accepted from all those desiring to be heard and these statements were analyzed and briefed for the members of the committee.

The committee, realizing that the bill as it passed the House could possibly result in hardship in some cases and that in at least some of those cases there was no intent to conceal the country of origin, amended the bill to provide that in cases where the Secretary of the Treasury finds that compliance would necessitate such substantial changes in customary trade practices as to cause undue hardship and that the repackaging in question was otherwise than for the purpose of concealing the origin of the article, the requirements of H.R. 5054 would not apply. It would seem to follow that the cleaning and mixing of spices, for example, and subsequent repackaging in the same type of packages that have, for a long time, been recognized by ultimate purchasers and consumers would not come under the purview of the bill as amended. The same would apply to the packaging of such items as tea, chocolate, mixed nuts, olive oil, and related products.

This amendment would also reduce greatly the administrative problems of the Treasury Department. Representatives of this Department pointed out the great difficulty in following items imported in

bulk through the importer, the wholesaler, and retailer to see whether repackaging was done in violation of the law and agreed that the amendment would serve to remove a number of products from their required surveillance.

#### CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 304 OF THE TARIFF ACT OF 1930, AS AMENDED

##### SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) **MARKING OF ARTICLES.**—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) or (c) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U.S.C., 1934 edition, title 19, secs. 1351-1354), as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a). If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) *When any imported article the container of which is required to be marked under the provisions of subsection (b) is removed from such container by the importer, or by a jobber, distributor, dealer, retailer, or other person, repackaged, and offered for sale in the new package, such new package shall be marked in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of such article. Any article offered for sale in violation of the provisions of this subsection shall be subject to seizure and forfeiture. When any article passes out of the custody and control of the importer, he shall be absolved from all responsibility with respect to subsequent repackaging unless performed by or for his account. This subsection shall not apply in cases where the Secretary of the Treasury finds that compliance with the marking requirements of this subsection would necessitate such*

*substantial changes in customary trade practices as to cause undue hardship and that repackaging of the article in question is otherwise than for the purpose of concealing the origin of such article.*

[(c)] (d) **ADDITIONAL DUTIES FOR FAILURE TO MARK.**—If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

[(d)] (e) **DELIVERY WITHHELD UNTIL MARKED.**—No imported article held in customs custody for inspection, examination, or appraisal shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection [(c)] (d) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[(e)] (f) **PENALTIES.**—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this Act, he shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both.