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ABOLITION OF OATH OF CUSTOMS AND INTERNAL REVENUE EMPLOYEES PRIOR TO COMPENSATION

JULY 29 (calendar day, JULY 30), 1935.—Ordered to be printed

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

REPORT

[To accompany S. 3286]

The Committee on Finance, to whom was referred the bill (S. 3286) to abolish the oath required of customs and internal-revenue employees prior to the receipt of compensation, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The Committee amendments are as follows:

Page 5, line 16, insert "(a)" after "SEC. 6".

Page 5, line 19, insert the following new paragraph at the end of section 6:

> (b) Subdivision (a) of section 641 of such Act is amended by adding at the end thereof the following new sentence: "The Secretary of the Treasury may prescribe such rules and regulations governing the conduct of business of customhouse brokers as he may deem necessary to the protection of importers and the revenue of the United States."

NECESSITY AND PURPOSE OF THE BILL

The objectives of this bill are threefold:

I. To repeal certain provisions of existing law requiring oaths from customs and internal-revenue employees before they may receive compensation. When these provisions were enacted, salaries of customs employees were paid on the basis of fees received and percentages of duties collected. These provisions make it mandatory that prior to receipt of compensation by any customs or internal-revenue employee, he must subscribe to an oath that neither he nor any member of his family has received any compensation or gratuity for any acts performed in connection with the performance of his duties. Apparently this was deemed a necessary safeguard, in view of the rather loose system of payment of compensation to such employees. With the reorganization of the Customs Service by the act of August 24, 1912, the salaries of customs employees were fixed by

law and paid out of annual appropriations. This method of compensation now likewise applies to internal-revenue employees. With respect to method of payment, therefore, internal-revenue and customs employees are on the same status as any other Government employees, whose salaries are fixed by law and paid out of annual appropriations. Since other employees are not required to subscribe to an oath before receiving payment of salary, there appears to be no reason for continuation of such a requirement with respect to customs and internal-revenue employees.

From the standpoint of fiscal administration, it is highly desirable that these provisions be repealed. Many customs employees are located at points some distance from disbursing centers, and the requirement of an oath before receiving compensation often involves great inconvenience. Moreover, the necessity for taking an oath complicates matters when payment of compensation is made through a central disbursing office.

II. To amend provisions of existing law relating to protests by domestic manufacturers, producers, or wholesalers against the classification or rate of duty imposed upon imported merchandise of the same character as that manufactured, produced, or sold by them. At present, if after a complaint of this type, the Secretary of the Treasury nevertheless decides that the existing classification or duty rate is correct, and the domestic manufacturer, etc., thereafter files a protest against his decision, the liquidation of entries (consisting of the final ascertainment of duties) of all merchandise of the character involved, imported or withdrawn from warehouse more than 30 days after the publication of the decision of the Secretary of the Treasury, is suspended pending the final judicial decision on the protest. The result is that prior to the decision of the United States Customs Court, or, in the case of an appeal, the Court of Customs and Patent Appeals, there is a period of uncertainty during which importers of such merchandise do not know what duties they may be required to pay. This is a great hardship to responsible importers, who, unlike irresponsible importers, cannot continue importing the goods in question on the chance that the lower duty rate will be upheld. Since they must anticipate the possibility of an adverse decision, this results in a virtual embargo on importations by them pending disposition of the protestant's case. Less responsible importers, on the other hand, continue their importations of such merchandise, gambling on the probability that the courts will sustain the lower duty rate so that they will not have to make provisions for an adverse decision and knowing well that if they are ever called upon to pay the additional duty they will not be able to do so.

The present proposed amendment is designed to remedy this condition. Under this amendment, the decision of the Secretary of the Treasury as to classification and rate of duty will control, notwithstanding a protest by a domestic manufacturer, etc., until the publication of a judicial decision adverse to, or in conflict with, his decision. In other words, the results of successful domestic protest will apply only to importations subsequent to a judicial ruling sustaining the protest, and not, as at present, to importations made in some cases many months prior to such a ruling. It is believed that this amendment, if enacted, will remedy the existing situation which has just been described.

III. To amend the provisions of law which relate to the issuance, suspension, and revocation of licenses of customhouse brokers. There are approximately 1,800 of these customhouse brokers, of whom about 800 are licensed to transact business in the New York customs collection district. These brokers vary in size from large corporations or partnerships employing many people and having from two to six licensed brokers to the individual broker who has graduated from a clerkship in a brokers firm, handles all his own work and has desk space in some office or conducts his business solely from the brokers' room in the customhouse.

In these hands is placed the business of importers who annually pay to the Government upwards of three hundred millions of dollars in duties. While the large importers are more or less familiar with customs procedure, the great majority of importers are solely dependent upon the honesty and the competency of their customs brokers to protect their interests. Even in the case of large importers, however, due to the specialized nature of customs procedure, great reliance must be placed upon their brokers for proper entry of merchandise.

In view of the fact that these customhouse brokers are quasi officers of the Treasury and that by licensing them the Treasury holds out to importers that it has investigated their character and represents to such importers that they are capable and honest in their conduct of their customs business, and in view of the large opportunities for profitable fraud open to dishonest persons who, from the very nature of things, occasionally succeed in obtaining licenses as customhouse brokers despite the strictest possible investigation by the Treasury of their character and qualifications, it is essential that the Department have wide discretion in dealing with these brokers and that the Secretary of the Treasury, therefore, be given broad powers to supervise and regulate their activities. Under existing law his powers in these respects are very limited, and it is the purpose of the present amendments to broaden the Secretary's powers so that he can in the future more effectively cope with frauds practiced by customhouse brokers on both importers and the revenues of the United States.

Although the great majority of these brokers are entirely above reproach in the conduct of their business, the corrupt practices of a few, unhampered by adequate statutory provisions for supervision, have proved a grave menace to importers and customs revenue alike. The present amendments are designed to remedy this situation. They will give to the Secretary of the Treasury the power to regulate the conduct of the business of customhouse brokers in such a manner that the opportunity for fraudulent practices will be reduced to an absolute minimum. He will have the power to compel brokers to maintain records of their business transactions, to submit them for examination by customs agents, and to divulge information which is essential and necessary in the investigation of frauds. This is analogous to his powers under section 511 of the Tariff Act of 1930 which provides for the inspection of the books, records, etc., of importers. At present, the Secretary has none of the foregoing powers. In addition, under the proposed legislation the Secretary of the Treasury's decision relative to the suspension or revocation of a customhouse broker license will

be final. At present, provision is made by law for a complete review by the United States Customs Court of decisions of this character by the Secretary. The present statute provides that the filing of an application by a customhouse broker to the customs court for review of a decision by the Secretary suspending or revoking his license acts as an automatic stay of such suspension or revocation. Since the docket of the customs court is extremely crowded, it may require a very considerable period of time, therefore, before such a suspension or revocation is made effective. In the meanwhile the broker involved can freely continue the fraudulent practices which provoked the Secretary's suspension or revocation decision. For the best interests of all parties concerned, it is desirable that cases of this character should be disposed of expeditiously, and under existing law this is not possible.

It must not be presumed that the proposed amendment will strip customhouse brokers of judicial protection from arbitrary administrative action in the suspension or revocation of their licenses. Under the general principles of law applicable to judicial review of administrative action, customhouse brokers will still have (and indeed cannot be denied) the right to petition the courts for relief from arbitrary or capricious administrative revocations or suspensions.

The practice of giving to administrative officers the power to issue licenses and conclusively to revoke the same for good cause (after due notice and opportunity for a hearing), subject only to limited judicial review of arbitrary or capricious action, has long been established in our law. Among the instances of revocatory powers of this character may be cited section 7 of the United States Grain Standards Act (7 U. S. C. 80) which relates to the revocation by the Secretary of Agriculture of licenses to inspect and grade grain; the act of March 4, 1913 (21 U. S. C. 154, 156) which relates to the revocation by the Secretary of Agriculture of licenses for the maintenance of establishments for the preparation of viruses, serums, and toxins for the treatment of domestic animals; section 5 of the act of July 4, 1884 (5 U. S. C. 493) which relates to the suspension or exclusion from practice before the Department of the Interior by the Secretary of the Interior of persons licensed to practice before that Department; section 2 of the act of March 4, 1933 (7 U. S. C., supp. VII, 51 (b)) which relates to the revocation by the Secretary of Agriculture of licenses to sample cotton; section 6, article I of the Provisional Regulations, approved January 30, 1934, issued pursuant to the authority of the Gold Reserve Act of 1934, which relates to the modification or revocation by the Secretary of the Treasury of licenses to acquire, transport, melt or treat, import, export, or earmark or hold in custody for foreign or domestic account, gold; and section 103, article 10 of the Silver Regulations of August 17, 1934, issued pursuant to the authority of the Silver Purchase Act of 1934 and the Executive order of August 9, 1934, which relates to the revocation by the Secretary of the Treasury of licenses to withhold, to acquire and withhold, or to export silver.

The present amendments are designed to make the procedure of revoking or suspending customhouse broker licenses and regulating the practice of such licensed brokers conform with the procedure of regulating, suspending, or disbarring agents, attorneys, or other

persons representing claimants before the Treasury Department as set out in the act of July 7, 1884 (23 Stat. 236 at 258, 259). Since the practice of customhouse brokers who represent importers, exporters, and other persons before this Department in customs matters does not differ in principle from that of agents or attorneys representing claimants before the Department in other matters, there appears to be no logical reason why a special procedure should be followed in the licensing of customhouse brokers, and, indeed, the present state of the law presents an anomalous situation, inasmuch as the Secretary of the Treasury under existing law has close control and extensive regulatory powers over all persons appearing before his Department in a representative capacity except customhouse brokers whose opportunities for fraud are probably greater than those of any other persons who appear before the Treasury Department. The Treasury Department has had many years of experience in administering the act of July 7, 1884, and it is felt that the application of this act to customhouse brokers, in addition to the above-described objectives, will result in highly desirable procedural uniformity.

EXPLANATION OF THE BILL

Section 1 repeals section 1790 of the Revised Statutes, which requires that prior to receipt of compensation by any customs or internal revenue employees, he must subscribe to an oath that neither he nor any member of his family has received any compensation or gratuity for any acts performed in connection with the performance of his duties. This section was derived from section 30 of the act of July 18, 1866.

Section 2 repeals section 1 of the act of March 15, 1898 (30 Stat. 277 at 286) which authorized Collectors of Customs and their deputies to administer the oath required by section 1790 of the Revised Statutes. Since the present proposed legislation contemplates dispensing with the requirement of such oath, this provision would become obsolete and should be removed.

Section 3 amends section 516 (b) of the Tariff Act of 1930 which relates to protests by domestic manufacturers, producers, or wholesalers against the classification or rate of duty imposed upon imported merchandise of the same character as that manufactured, produced, or sold by them. The effect of the amendment has already been sufficiently indicated under no. II of the three above-described objectives of the bill.

Section 4 is a saving clause continuing in effect the present provisions of section 516 (b) with respect to proceedings commenced under them, and making the provisions of the proposed amendment apply only in the case of complaints filed after the enactment of this bill.

Section 5 amends section 2 of the act of June 12, 1934 (48 Stat. 944) so as to exclude from the operation of section 516 (b), as amended by section 3 of this bill, articles with respect to whose importation into this country a foreign trade agreement has been concluded pursuant to the act cited. That act at present exempts such articles from the terms of section 516 (b), and the present provision is de-

signed to make it clear that this exemption will also extend to section 516 (b) in its amended form.

Sections 6, 7, and 8 amend section 641 of the Tariff Act of 1930, which relates to the issuance, suspension, and revocation of licenses of customhouse brokers. As already indicated, these sections are designed to make the procedure of revoking or suspending customhouse broker licenses and regulating the conduct of their business conform with the procedure of regulating, suspending, or disbarring agents, attorneys, or other persons representing claimants before the Treasury Department as set out in the act of July 7, 1884 (23 Stat. 236 at 258, 259).