

AMENDING TARIFF ACT OF 1930

HEARINGS BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

H. R. 6662

AN ACT TO AMEND THE TARIFF ACT OF 1930

JANUARY 22, 23, AND 25, 1932

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AMENDING TARIFF ACT OF 1930

FRIDAY, JANUARY 22, 1932

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

The committee met, at 10.30 o'clock a. m., in the room of the Committee on Finance, Senate Office Building, Friday, January 22, 1932, Senator Reed Smoot, presiding.

Present: Senators Smoot (chairman), Watson, Couzens, Keyes, Bingham, La Follette, Thomas of Idaho, Jones, Harrison, George, Walsh of Massachusetts, Connally, Gore, and Costigan.

Also present: Senator Vandenberg.

The CHAIRMAN. The committee will be in order. I have asked the senator from Michigan (Mr. Vandenberg) to be here and make a statement concerning his amendment to the bill. If there is no objection, I would like, Senator Harrison, to have the committee meet at 10 o'clock tomorrow morning, as several people have telephoned and expressed a desire to be heard by the committee.

Senator HARRISON. Are you going to ask the Treasury Department to be represented?

The CHAIRMAN. Mr. Mills will be here.

(Senator Vandenberg's amendment to H. R. 6662 is as follows:)

Amendment (in the nature of a substitute) intended to be proposed by Mr. Vandenberg to the bill (H. R. 6662) to amend the tariff act of 1930, and for other purposes, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

That the tariff act of 1930 is amended by adding after section 336 thereof a new section to read as follows:

"SEC. 336A. RECOMMENDATIONS FOR ADJUSTMENT OF DUTIES.—(a) Upon its own motion or upon application of any interested party showing good and sufficient reason therefor, the commission shall investigate and ascertain the differences in the cost of production of any domestic article and of any like or similar foreign article which is on the free list or which, if on the dutiable list, the commission has good reason to believe should be transferred to the free list. If the commission finds it shown by the investigation that in order to equalize the differences in the cost of production of the domestic article and of the foreign article when produced in the principal competing country or countries it is necessary to transfer the foreign article from the free list to the dutiable list or from the dutiable list to the free list, then the commission shall make a report thereon to the President and to the Congress. The report shall be accompanied by a statement of the commission setting forth the findings of the commission with respect to the differences in the cost of production, the elements of cost included in the cost of production of the respective articles as ascertained by the commission, and any other matter deemed pertinent by the commission.

"The President, upon receipt of any such report of the commission, shall promptly transmit the report to the Congress with his recommendations, if any, with respect to the transfer of the foreign article from the free list to the dutiable list or from the dutiable list to the free list.

"Any bill having for its object the carrying out, in whole or in part, of the recommendations made by the commission in any such report shall not include

any item not included in such report; and in the consideration of such bill, either in the House of Representatives or in the Senate, no amendment thereto shall be considered which is not germane to the items included in such report.

"(b) No report shall be made by the commission under this section unless the determination of the commission with respect thereto is reached after an investigation by the commission during the course of which the commission shall have held hearings and given reasonable public notice of such hearings, and reasonable opportunity for the parties interested to be present, produce evidence, and to be heard. The commission is authorized to adopt such reasonable rules of procedure as may be necessary to execute its functions under this section.

"(c) In ascertaining the differences in costs of production under this section, the commission shall take into consideration, in so far as it finds it practicable—

"(1) The differences in conditions of production, including wages, costs of materials, and other items in cost of production of like or similar articles in the United States and in competing foreign countries;

"(2) Costs of transportation;

"(3) Other costs including the cost of containers and coverings of whatever nature and other charges and expenses incident to placing the article in condition, packed ready for delivery, storage costs in the principal market or markets of the United States and of the principal competing country or countries, and costs of reconditioning or repacking wherever incurred;

"(4) Differences between the domestic and foreign article in packing and containers, and in condition in which received in the principal markets of the United States;

"(5) Differences in wholesale selling prices of domestic and foreign articles in the principal markets of the United States in so far as such prices are indicative of costs of production, provided such costs can not be satisfactorily obtained;

"(6) Advantages granted to a foreign producer by a foreign government or by a person, partnership, corporation, or association in a foreign country;

"(7) Any other advantages or disadvantages in competition which increase or decrease in a definitely determinable amount the total cost at which domestic or foreign articles may be delivered in the principal market or markets of the United States; and

"(8) DEFINITION OF COSTS OF TRANSPORTATION.—'Costs of transportation' for the purposes of this section shall be held to include, in so far as applicable:

"First. Freight charges and all other charges incident to transportation, including transit insurance, costs of loading and unloading, and port charges and landing charges. These costs shall be computed to such principal market or markets of the United States as may most nearly insure equal competitive opportunity to domestic articles and like or similar foreign articles in the principal consuming region or regions of the United States. If this purpose may be best accomplished thereby, such costs on domestic articles and on like or similar foreign articles shall be computed to different principal markets of the United States.

"Second. (A) In the case of an imported article, the cost of transporting such article from the areas of substantial production in the principal competing country to the principal port of importation of such article into the United States; and (B) in the case of a domestic article, the cost of transporting such article from the areas of substantial production that can reasonably be expected to ship the article thereto, to the principal port of importation into the United States of the like or similar competitive article."

The CHAIRMAN. We will hear Senator Vandenberg.

STATEMENT OF HON. ARTHUR H. VANDENBERG, UNITED STATES SENATOR FROM MICHIGAN

Senator VANDENBERG. Mr. Chairman, I only want a moment to explain the philosophy of the substitute which I have submitted, which is printed, and is in the file of the committee.

Senator WATSON. How long is it, Senator? Will you not read it?

Senator VANDENBERG. Without reading it, let me say, Mr. Chairman, that it is a section of the Collier bill taken out specifically, so that we can perhaps save the time of reading it if you will permit me to make this brief explanation in connection with it.

Mr. Chairman, it occurs to me that the philosophy of flexibility that has been written into the Collier bill respecting free-list commodities is a thoroughly excellent formula. I know of no way that we can have flexibility respecting commodities upon the free list except by congressional action. It is impossible to write a strict formula of limitations for any commodities that have no rates at all. Therefore, I am heartily attracted by the Collier bill's formula for reaching the commodities upon the free list, and I know of no other way that commodities upon the free list can be brought within the purview of the flexible tariff law.

Senator WATSON. What do you mean by that? I have not read the Collier bill. That is, just to take off the free list and put on the protected list?

Senator VANDENBERG. I think the formula, Senator Watson, was identified in the old debates as the Norris-Simmons formula. That is approximately correct.

Senator HARRISON. That was included in the Simmons amendment.

Senator VANDENBERG. That is my understanding.

Senator WATSON. I remember that very well.

Senator VANDENBERG. Which permits recommendations of the Tariff Commission respecting free list commodities to go to Congress and be acted upon by Congress, with the bill protected against amendment on its way through the Congress.

Senator HARRISON. Senator, if I understand the difference in your proposition, it is this. We propose in the Collier bill to have the commission, after the ascertainment of facts, including not only the dutiable list but to take things from the free list and put them on the dutiable list, and vice versa, send the same to Congress for final action. You leave it in the commission to jack up the rates to 50 per cent, or lower them within that same limit, reporting them to the President, and the President proclaiming them, except the articles that are on the free list, or those that are on the dutiable list and it is believed should be put on the free list; you say they shall come to Congress for action?

Senator VANDENBERG. That is the correct definition of the substitute. The Collier bill applies this new formula to the entire tariff structure. My substitute proposes to apply it to the free list and leave the present flexible structure as it is. I claim for that plan that it is a substantial increase in flexibility as a general proposition, whereas the Collier plan, of course, stops that flexibility when Congress is not in session. I think the country wants a maximum of tariff flexibility. I am submitting in behalf of this substitute that it increases substantially and effectively the flexible machinery of the tariff, whereas the Collier bill actually cuts it in half so far as the calendar is concerned.

Having said that, I am content to leave the proposition with the committee, with this one further word. Mr. Chairman, I think there are commodities to-day upon the free list which must be given a day in court in this session of Congress. I do not think we can defend ourselves against giving them a day in court on their merits. Naturally, I have copper in mind primarily, because it affects a section of Michigan which will practically cease to exist as an industrial community within the next 12 months without any shadow of a doubt. That is equally true, if Senator Hayden and Senator Ashurst are

reliable witnesses—and I assume they are—that is equally or even more true respecting the State of Arizona.

I am not saying that these commodities should have rates; but I am saying that we can not satisfy them nor do justice to their situation except as we create a formula under which they can be heard upon their merits during this session of Congress. And I am submitting that this substitute provides that formula without changing the existing structure, and creates a formula for which there would be a reasonable possibility of complete fulfillment in this Congress.

The CHAIRMAN. Well, Senator, the only real danger, if I may so term it, about your amendment, would be this. If we put 2 cents a pound on copper, taking it from the free list, your amendment does not provide in any way that a compensatory duty should be given to all articles manufactured from copper or in which copper plays an important part. How could we reach a situation of that kind without opening up the whole tariff question?

Senator VANDENBERG. The fabricated articles are now on the dutiable list.

The CHAIRMAN. Yes.

Senator VANDENBERG. And they would immediately be eligible for compensatory consideration under the other section of the flexible tariff structure which permits administrative attention.

The CHAIRMAN. You mean by the Tariff Commission?

Senator VANDENBERG. And the Executive; yes, sir.

That is all, Mr. Chairman, I want to say this morning on the proposition. I thank the committee for its courtesy.

Senator CONNALLY. If your amendment is adopted, it would absolutely turn over to the Tariff Commission all tariffs?

Senator VANDENBERG. Oh, no; not at all.

Senator CONNALLY. How much have you proposed that would be turned over?

Senator VANDENBERG. Under my substitute all of these free-list rates come back to Congress precisely as the Collier bill provides, for congressional decision.

Senator CONNALLY. I thought you said a while ago that without your amendment, when Congress was in recess they could not.

Senator VANDENBERG. I said that under the Collier bill, as written, there would be no flexibility when Congress is not in session.

Senator CONNALLY. Under your amendment could the President take articles on the free list and put them on the dutiable list when Congress is not in session?

Senator VANDENBERG. My substitute, like the Collier bill, confines the free list flexibility to sessions of Congress, and leaves the complete authority in the hands of Congress.

The CHAIRMAN. Have you anything further that you wish to say, Senator Vandenberg?

Senator VANDENBERG. No; that is all. Thank you, Mr Chairman.

The CHAIRMAN. We will have a hearing on this matter to-morrow morning at 10 o'clock, when witnesses will be heard.

AMENDING TARIFF ACT OF 1930

SATURDAY, JANUARY 23, 1932

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

The committee met at 10.30 o'clock, a. m., in the room of the Committee on Finance, Senate Office Building, Saturday, January 23, 1932, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), Watson, Couzens, Bingham, Thomas of Idaho, Jones, Harrison, George, Walsh of Massachusetts, Barkley, Connally, Costigan, and Hull.

The CHAIRMAN. The committee will please come to order. The object of the meeting this morning is to hear evidence from parties that have requested an opportunity to be heard—and there may be others—in connection with H. R. 6662, an act to amend the tariff act of 1930 and for other purposes. I take it for granted that those who desire to be heard have already given their names to the secretary. Mr. Emery, I think, is the first one on the list. Mr. Emery, you may proceed to make any comments upon the bill that you feel like making at this time.

STATEMENT OF JAMES A. EMERY, COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

Senator COUZENS. Will you please state whom you represent?

The CHAIRMAN. Mr. Emery, whom do you represent?

Mr. EMERY. I represent the National Association of Manufacturers, and a very large group of industrial associations in all parts of the United States that are opposed to the bill in its present form. I have here a list, which I will file with the committee, of the associations represented.

Senator COUZENS. May they be placed in the record, Mr. Chairman?

The CHAIRMAN. I will place them in the record at this point.

(The list referred to is as follows:)

ASSOCIATIONS REPRESENTED BY MR. EMERY IN OPPOSITION TO H. R. 6662 IN ITS PRESENT FORM

National Association of Manufacturers, Robert L. Lund, president.
American Jewelers Protective Association, New York City.
American Macaroni Manufacturing Association, Mt. Vernon, N. Y.
American Supply & Machinery Manufacturers Association, Pittsburgh, Pa.
Armco Culvert Manufacturers Association, Middletown, Ohio.
Associated Woolen Ware Manufacturers, Fitchburg, Mass.
Associated Flower & Fancy Feather Association, New York City.
Association of Manufacturers of Wood Working Machinery, Washington, D. C.

Coach Lace Institute, New York City.
 Cold Finished Steel Bar Institute, New York City.
 Commercial Lock Washer Statistical Bureau, New York, N. Y.
 Converters Association, New York City.
 Glazed & Fancy Paper Manufacturers Association, Springfield, Mass.
 Graphic Arts Organization, New York City.
 Heating & Piping Contractors National Association, New York City.
 Manufacturing Chemists Association of the United States, Washington, D. C.
 Master Builders Association, Boston, Mass.
 Master Dyers Association, Philadelphia, Pa.
 National Association of Dyers & Cleaners, Silver Spring, Md.
 National Sand & Gravel Association, Washington, D. C.
 National Machine Tool Builders Association, Cincinnati, Ohio.
 Paperboard Industries Association, Chicago, Ill.
 Plyboard Manufacturers Association, Chicago, Ill.
 Silk Dyers Association, Paterson, N. J.
 Southern Appalachian Coal Operators Association, Knoxville, Tenn.
 Steel Warehouse Institute, New York, N. Y.
 The Drill & Reamer Society, New York City.
 The National Fertilizer Association, Washington, D. C.
 The Piano Crafters' Guild (Inc.), New York City.
 The Tap & Die Institute, New York, N. Y.
 Webbing Manufacturers Exchange, New York, N. Y.
 Associated Industries of Alabama, Birmingham, Ala.
 Associated Industries of Arkansas, Pine Bluff, Ark.
 The Manufacturers Association of Connecticut, Hartford, Conn.
 Associated Industries of Kentucky, Louisville, Ky.
 Associated Industries of Maine, Portland, Me.
 Associated Industries of Massachusetts, Boston, Mass.
 Associated Industries of Rhode Island, Providence, R. I.
 Associated Industries of Vermont, Rutland, Vt.
 California Manufacturers Association, San Francisco, Calif.
 Colorado Manufacturers & Merchants Association, Denver, Colo.
 Associated Industries of Florida, Jacksonville, Fla.
 Iowa Manufacturers Association, Des Moines, Iowa.
 Louisiana Manufacturers Association, New Orleans, La.
 Manufacturers & Employers Association of South Dakota, Sioux Falls
 Nebraska Manufacturers Association, Lincoln, Nebr.
 New Hampshire Manufacturers Association, Manchester, N. H.
 New York Lumber Trade Association, New York City.
 Ohio Manufacturers Association, Columbus, Ohio.
 Oklahoma Cottonseed Crushers Association, Oklahoma City, Okla.
 Tennessee Manufacturers Association, Nashville, Tenn.
 Texas State Manufacturers Association, San Antonio, Tex.
 Wisconsin Manufacturers Association, Madison, Wis.
 Virginia Brick Manufacturers Association.
 East Side Employers Association, East St. Louis, Ill.
 Employers Association of Jackson, Mich.
 Industrial Association of Perth Amboy, N. J.
 Industrial Association of Santa Clara County, Calif.
 Industrial Association of Utica, N. Y.
 Manufacturers Association of Bridgeport, Conn.
 Manufacturers Association of Jamestown, N. Y.
 Manufacturers Association of Poughkeepsie, N. Y.
 Manufacturers Association of Syracuse, N. Y.
 Manufacturers Association of Wilmington, Del.
 Metal Manufacturers Association of Philadelphia.
 Newton Industrial Association, Newton, Iowa.
 The Employers Association of Alliance, Ohio.
 The Employers Association of Portsmouth, Ohio.
 Typothetae of Philadelphia.
 The Employers Association of Fort Wayne.
 Employers Association of North Jersey.
 Merchants & Manufacturers Association of Toledo, Ohio.
 Associated Industries of Seattle, Wash.
 Manufacturers Association of Lancaster, Pa.
 Manufacturers Association of Meriden, Conn.

Mr. EMERY. Mr. Chairman and gentlemen of the committee, the bill before you is mainly a substitute for section 336 of the tariff act of 1930. The proposed change in policy is one of vital interest to the industrial interests of the United States. For that reason, thanks to your indulgence, we venture to take time, for a moment, to point out the difference between, first of all, the law as it now is, and the proposal before this committee, as it would operate.

Senator COUZENS. You mean the commission, not the committee. You said the committee would operate. You mean the commission.

Mr. EMERY. The commission, referring to the Tariff Commission.

Section 336, as it presently operates, provides that upon the request of the President of the United States, of either House of Congress, or upon its own initiative or that of any interested party showing good reason therefor, the Tariff Commission shall investigate and ascertain the difference between the relative domestic and foreign cost of production of the commodity which is the subject matter of the petition.

The pending bill limits that to the President of the United States and interested parties, or the commission upon its own initiative, striking out either House of Congress, and requiring them to confine that to a proceeding under section 332, which, as distinguished from section 337, is not a provision which results in a recommendation for an adjustment of rate. That is the first provision. Otherwise the proceedings are initiated in the same way as they are under the present law.

Secondly, under section 337 of the law as it now stands, the commission is limited in the recommendation which it may make as a result of its investigation, to an increase or decrease in duty not to exceed 50 per cent in either direction, and it is prohibited from making a recommendation in regard to nondutiable articles, or the removal of dutiable articles to the free list. By the terms of the bill before the committee that limitation is removed and the commission may recommend the removal to or from the free list.

A third difference lies in the fact that under the law as it now reads the commission's recommendation is made to the President and the President possesses the power, by nonaction, to veto the recommendation of the commission by not proclaiming the adjustment of duty recommended; but he may not, as he could under the act of 1922, substitute another duty within the limitation provided. So, he may recommend or proclaim only the duty recommended by the commission as a result of this investigation, or recommend nothing at all.

Under the provisions of this bill the commission reports to the Congress and not to the President. As the House passed the bill there is a general proviso that 60 days after the date of the report to Congress of such order by the commission, such changes shall take effect, and so forth. That is in line 20, on page 2.

The CHAIRMAN. That is, changes in classification.

Mr. EMERY. Yes; and rates of duty. [Reading:]

Sixty days after the date of the report to Congress of such order by said commission, such changes in classification shall take effect, and such increased or decreased duties shall be levied, collected—

And so forth.

It goes to the whole matter. What I call the committee's attention to is the form of the bill as it passed the House, because I think it

defeats its own intention. The general conference of authority is subject to only one exception. That is, when the commission makes a recommendation, under the bill as it here remains, it becomes effective at the end of 60 days, provided that if before the expiration of such period of 60 days Congress, then in session, shall have, by joint resolution, declared the order of the commission rejected, then the changes in classification, and so forth, shall not go into effect.

I think it is very clear that when a general principle of authority of that nature is laid down, a court could not otherwise construe it except in the light of the exception, to say that the effect of it was to put the order of the commission in effect provided that Congress, being in session at the time the recommendation was made, did not within 60 days reject the order.

It is clear, from the debates in the House, that that was not the intention of the proponent of the resolution; but rather that it was his intention to provide that if Congress, being in session when the commission made its recommendation, did not reject it within 60 days, it would become effective. Thus, when Congress was not in session, the commission's recommendation could be filed with the Congress, but there was no means by which it could be made effective until Congress resumed its sessions. Thus, for a 10-month period, at least, in every other—

Senator HARRISON. That was an amendment that was offered on the floor of the House.

Mr. EMERY. Yes; the LaGuardia amendment.

Senator HARRISON. It was not incorporated in the bill as originally reported out of the committee.

Mr. EMERY. I call the committee's attention to the form of the bill, because I discuss it in the light of its intent rather than the light of its language.

The bill carries, as does the law, the requirement—

The CHAIRMAN. This could go into effect without any action of Congress, then?

Mr. EMERY. Certainly.

The CHAIRMAN. Provided it came in two days or two weeks before adjournment.

Senator GEORGE. It is clearly unconstitutional, for half a dozen different reasons. There will be no insistence that that is a valid provision of this bill by anybody on the Democratic side, and I dare say on the Republican side.

Mr. EMERY. The same requirement continues in the bill as is required in the law, that no recommendation can be made by the commission without investigation, and no action can be taken by the Executive or the Congress until a preliminary investigation by the commission is had.

Then comes the provision that—

Any bill having for its object the carrying out, in whole or in part, of the recommendations made by the commission in any such report shall not include any item not included in such report; and in the consideration of such bill, either in the House of Representatives or in the Senate, no amendment thereto shall be considered which is not germane to the items included in such report.

That, of course, is a new matter. There is a difference between the formula provided here for determining the elements involved in ascertaining the cost of production. I do not call those particularly

to the committee's attention, except to say that they differ from those now provided in the law under which the commission operates, and they would represent the natural difficulties in carrying out a new formula, as against the one under which the commission has been operating for a considerable period of years, since there were slight changes made in the act of 1930.

A further essential difference between the bill and the law is found in section 3, which provides for a consumers' counsel, which is an office in the legislative branch of the Government, to be in charge of a counsel appointed by the President and confirmed by the Senate, who is to appear before the commission and represent the consuming public in any proceeding before the commission. In the original House bill he was also authorized to carry on independent investigations other than those of the commission. That was struck out in the original bill as reported to the House. It is not in here, but the bill now provides that the counsel shall represent the consuming public before the commission in any proceeding there, and that the commission is required to furnish him with any information that he may require for the performance of his duties, and conduct any investigation which he may suggest which he thinks necessary in the performance of those duties.

The CHAIRMAN. After calling attention to the provisions of the bill do you intend to go back and discuss those provisions?

Mr. EMERY. Yes. I want to point out the difference between the law and the bill first, and then take up the items, if I may.

The final provision in here is section 4, which invites the President to initiate a movement for an international economic conference, and the purposes of that conference are here outlined.

Mr. Chairman, if I may return, now, in the light of that statement of the differences between the two, to our comment on the bill, we say, first, that this bill, in many respects, represents an agreement of exceptional interest to the industry of the United States, between both great parties, first, upon the acceptance of the protective principle and the formula through which it shall be applied in the determination of tariff rates; and in the need for an investigation by an impartial body to determine the facts upon which the formula is to be applied.

When it comes to the execution of the recommendations of the body to which the citizen has been turned for remedy in the presence of a defective rate or one that does not comply with the formula set up by the Congress, we come again to the parting of the ways.

As the law now stands, we have what may be briefly described as an administrative adjustment of the tariff within limitations, under a formula proscribed by Congress. The facts necessary to execute that are found by the Tariff Commission, and the President of the United States may make them effective by proclamation, or he may not; but he may not do other than make the recommendation of the fact-finding body effective, within the limitations prescribed by Congress.

Secondly, there is a recognition here of the logical result of any fact-finding examination, expressed in the elimination of the prohibitions upon removal to or from the free list—that is, upon recommendations for removal to or from the free list.

Gentlemen, if you were going to create a fact-finding body whose only purpose is to determine the relative cost of production between a foreign and a domestic competing article, either at your request or that of the President, or that of an interested party, or on the initiative of the commission itself in the performance of its function, then you have obviously limited the finding of the scientific facts to which its direction is turned, by an obligation of law, to an incomplete finding, if the commission may not recommend to you the results of its own inquiry.

Thus, if it finds, for example, in the pursuit of your formula, that the difference between the relative production cost of a foreign and a domestic article to which its attention is called on the petition of a citizen, or by your direction, would logically transfer the article from the dutiable to the free list, or from the free to the dutiable list, or would result in the recommendation of a rate that was in excess of, or below the one to which it may go in its recommendation, under its limited power, the result is that the recommendation can not coincide with its judgment or its facts.

It is therefore a body that has been authorized by law—indeed, directed by law—to find facts which it may not make the subject of a recommendation; and you have invited a citizen, under the law, to appear before this body for the purpose of correcting a defective rate, both parties having set up in this law the formula which is to be applied.

When the party appears there, when the investigation has been made as a result of his petition, and the commission has made its finding, the relief which it is the purpose of the law to afford can not be complete unless the remedy is applied. The remedy obviously is, at least, the consideration of the recommendation of the commission. To be complete it must put the recommendation of the commission into effect if it coincides with the facts; for there can be no other purpose in the law which you have put into operation and for which you have prescribed a formula and for the execution of which you have provided machinery, unless, the remedy having been found, it is applied.

The bill as it stands before you now retains the instrumentality for providing relief, but destroys the means of making it effective. I think that is perfectly plain when you follow the result of the operation of the law under the bill before you, because this bill provides that while the commission may make a recommendation, without limitation, in accordance with what it finds to be the facts, the only way that it can be made effective is by reporting the recommendation to Congress, upon which what happens? Does it occupy any preferred status? How can it be made effective except through the introduction of a bill, which has no different status from any of the thousands of proposals that are introduced in both Houses in every session?

Senator HARRISON. When it is reported out of the committee, may I say, it has a privileged character.

Mr. EMERY. But there is no promise in this bill, and there is no obligation to introduce a bill to make it effective. There is no promise that that bill shall be made the subject of expeditious, or any consideration. It stands in no different place from any other measure that happens to be introduced into Congress. So, as a matter of fact, the operation of this principle in practice, Senator, it seems to me, is that

you have invited the parties to seek relief, and, having found the facts upon which the relief is to be——

Senator HARRISON. Is that quite fair? Here is the report, which comes in from the Tariff Commission, stating the facts.

Mr. EMERY. Yes, sir.

Senator HARRISON. Of course, a bill has to be introduced to put it into effect.

Mr. EMERY. Yes, sir.

Senator HARRISON. The bill, if it should be reported out of the committee, is privileged. It has a privileged status. It is different from a great many other bills that might be reported out of the committee.

Senator COUZENS. Is not the catch in the question of being reported out of the committee?

Senator HARRISON. Of course, if it is not reported out of the committee, there is no privileged status.

Mr. EMERY. There are several steps, Senator. I do not think this is an unfair statement. First of all, there is no obligation to introduce a bill after the recommendation is made in accordance with the situation then disclosed.

Senator BULKLEY. The same situation——

Mr. EMERY. I beg your pardon, Senator. May I finish? The only way the recommendation could be made effective is that a bill must be introduced. Somebody must do that. There is no promise here, and there is no obligation to do it.

Secondly, it must receive committee consideration; third, it must be reported out of the committee; and fourth, it must be acted upon.

I want to take up that question of privilege, because I can not find anything here that indicates that it occupies any privileged status whatever.

Senator HARRISON. The rules of the House of Representatives make revenue measures of privileged character.

Mr. EMERY. They do when they get to the floor.

Senator HARRISON. Oh, yes.

Mr. EMERY. But they do not give them any privileged status in connection with introduction, consideration by the committee, or report.

Senator HARRISON. No.

Senator BARKLEY. I do not want to interrupt you——

Mr. EMERY. May I just answer the question? Those are the three stop-gaps that appear at first glance, and I would like to point out another.

Senator BARKLEY. The same situation exists as to the President. There is no obligation upon him to act. He can pigeonhole the whole thing, and has done so numerous times. Is there any more reason why Congress should be hog tied than that the President should be hog tied?

Mr. EMERY. No, Senator. That is the weakness of the law. I think a limitation ought to be put on action in each case if the remedy is to be made complete. I criticize just as much the right to indefinitely delay consideration of the recommendation by the President as I would indefinite delay on the part of Congress in considering the recommendation. If Congress intends to execute the purpose for which this law is enacted, on its face it is holding a promise to the ear and breaking it to the heart.

Senator HARRISON. How would you cure it?

Mr. EMERY. The only way I can see to cure it is to provide that the recommendation of the commission shall be made effective within a definite time if Congress does not act upon it.

Senator WATSON. Suppose there is no Congress in session.

Mr. EMERY. Then it only makes more glaring the inability to correct the serious defect that may exist in the law.

Senator WATSON. How would you remedy that?

Mr. EMERY. I would not hesitate, Senator, to see you go the whole length, and permit the recommendation to become effective, if you were not in session.

Senator WATSON. Within the limitation of time, when there is no Congress in session.

Mr. EMERY. When there is no Congress in session it becomes effective within the time you prescribe; but if you leave it with the President and the commission you have a divided responsibility for the action with the President. As the President of the United States is the chief executive officer of the Nation, he is to take the heavy responsibility of doing it. But if you place a limitation upon the time within which action may be had, then you have provided the only effective remedy by which the recommendation and the relief which you have afforded by law can be made effective.

Senator BARKLEY. In that case a President who was unfriendly to the spirit of this measure, through his Tariff Commission, might delay all recommendations until the adjournment of Congress. Then the Tariff Commission would become the tariff legislator of the country, because if Congress were in vacation for nine months, they could huddle all their recommendations together at one time and have them go into effect automatically, or put them into effect by their own order, and leave Congress entirely out of it. The whole object of this measure is to try to retain in Congress some measure or revenue legislation.

Mr. EMERY. Senator, I am discussing this in the light, first, of the preliminary fact that Congress has not surrendered one bit of its power to the Tariff Commission. It can legislate on the subject of the tariff whenever it gets ready. It can correct any schedule it thinks is defective. All it has to do is to proceed to do it; and whenever the Tariff Commission reports, if it adopted the recommendation, it could change the law tomorrow. This is a mere supplement to the power of Congress to afford adjustments for the purpose of correcting defects in the law which are made evident by the investigation of the commission, either by your direction, at the request of the President, on the application of a private party, or on the commission's own initiative.

Senator HARRISON. Let me ask your opinion as a lawyer—and you are a good one, or they would not have you in their employ—

Mr. EMERY. Thank you.

Senator HARRISON. Suppose it were the law that they could raise an article from the free list to the dutiable list, and they should wait until after Congress adjourned to make their report, and it should, under the law, become effective. Do you think that would be constitutional?

Mr. EMERY. I do not question the power of Congress to provide, through an executive agency, for the putting into effect of a formula

or principle that Congress provides as the standard of conduct, upon the ascertainment of certain facts, or certain conditions, or certain states of things. That has been the law of this country ever since the first tariff act was passed.

Senator HARRISON. That applies to taking it from the free list to the dutiable list?

Mr. EMERY. Yes, sir. The President of the United States has done that, under your direction, repeatedly.

Senator HARRISON. Taking it from the free list to the dutiable list?

Mr. EMERY. Yes.

Senator HARRISON. In what instance?

Mr. EMERY. *Clark v. Field* (143 U. S.).

Senator HARRISON. On what article?

Mr. EMERY. A whole series of articles. Congress provided that if a certain state of facts developed, the President of the United States, whenever that state of facts developed, in his judgment, was directed to take those articles from the free list and put them on the dutiable list.

Senator HARRISON. That was under the antidumping clause.

Mr. EMERY. No.

Senator BARKLEY. Countervailing duties.

Mr. EMERY. Yes. But I am talking about the question of power, not the form of the duty.

Senator GEORGE. You have no misgivings at all, Mr. Emery, in the light of the development of the whole theory of taxation and human liberty itself, in saying that Congress should just sit down and delegate its power to an outside body, or even to the President?

Mr. EMERY. I could not answer that question in the affirmative, as you state it. I assume that the legislative body will not legally surrender the power to do any of these serious and critical things without providing it with appropriate safeguards; but what I am directing your attention to, I hope as positively as I can, is that if you set up a flexible tariff law, to correct a defect which you clearly recognize, and which both parties have recognized in their platforms, and which undertakes to provide a remedy to the citizen as well as a means of correction to you without going through the tremendous machinery of legislation itself—if you are going to provide that, then if you open up the means of relief widely and narrow the means of applying the remedy so that it becomes almost impracticable of application, the net result of it is that you have provided the patient with a bottle of medicine and refused him a corkscrew so that he can get at it.

Senator HARRISON. I did not know they opened bottles of medicine with corkscrews.

Mr. EMERY. I am not familiar with the practice in this city, Senator.

Senator CONNALLY. May I ask you a question right there? You just said a while ago that Congress would still have the power to legislate on the tariff.

Mr. EMERY. Yes, sir.

Senator CONNALLY. But under your plan, after the Tariff Commission had acted on one of these rates, would not Congress face all the difficulties that you pointed out a while ago in connection with putting these things into effect? Somebody would have to introduce a

bill. It would have to be reported, and the President could veto it, and all that sort of thing.

Mr. EMERY. Yes.

Senator CONNALLY. You are perfectly willing to have those impediments in the way of Congress, when it is seeking to undo the work of this Tariff Commission, but you are not willing to have those impediments in its way when it is seeking to put them into effect. Is not that the net result of your argument?

Mr. EMERY. I do not think so, Senator. I expect the legislative body to be capable of curing its own defects.

Senator CONNALLY. You indicated a while ago that if the Tariff Commission came here with a recommendation for a certain rate, Congress could not be trusted to go ahead and act on that information and put it into effect, but the Tariff Commission or the President could be trusted.

Mr. EMERY. Pardon me, Senator. I did not say Congress could not be trusted.

Senator CONNALLY. You did not use those words, but your manner and your language implied it very strongly.

Mr. EMERY. No. What I am trying to point out—

Senator CONNALLY. You said we were providing the information, but defeating the purpose, because Congress would have to put it into effect. Then you indicated that that process was cumbersome and unwieldy, and Congress did not know its business, in effect, and could not do it, did you not?

Mr. EMERY. I think the Senator misinterprets what I said. I will try to make it plain. I said that it provided a remedy which you would invite the citizen to employ.

Senator CONNALLY. With our consent.

Mr. EMERY. Pardon me a moment. You invite him to employ a formula which you establish, and with such safeguards as you please to make. That is all in your power. You can put any safeguards you please around it. What I am anxious about is this. When you have reached the point at which your remedy is to be made effective, when your formula has been complied with and the recommendation to correct a defect is before you, I am anxious to see you provide means by which we will be assured that you will act upon it.

Senator CONNALLY. If Congress agrees with that. We do not propose to delegate to the Tariff Commission the absolute power to put its findings into effect, on the theory that those findings are perfect. Congress may not agree with those findings.

Mr. EMERY. At least, Senator, we would like to have the privilege of having you say so.

Senator CONNALLY. We will say so, under this bill, when it comes up. We will either approve it or kill it. You want the Tariff Commission established as an infallible agency.

Mr. EMERY. No. I only want to be sure, on behalf of those whom you have invited to come in here and get relief, that after the relief has been offered, you will at least consider it. There is no agreement here that you will consider it. There is no promise that it will receive expeditious, or any consideration at all. It stands in no different position from any other bill.

Senator CONNALLY. Why should it? What is there about the tariff that makes it sacrosanct?

Mr. EMERY. There is nothing sacrosanct about it, Senator; but you have created yourselves, by your own act, the presumption that you regard the correction of the tariff as a matter of serious public importance. I say it is. And, having provided, by your assumption, the condition and the remedy, you have lifted it up into the position of being an important thing to correct any defects. Both parties have done that. Its effect upon the industrial life of the United States and on all those who earn their living through that agency has been proved. That is the condition we are now in, and it is emphasized in this period of depression. All sorts of groups are knocking at your door, presenting to you the conditions in their industries. I know nothing about their merit, but they have no means of securing attention to those conditions through any of the administrative agencies you have set up.

The Tariff Commission act provided an agency for the investigation of facts, and certainly it is a vitally important matter that there shall be for the people of the United States and for the industries of the United States, a means of flexibly adjusting the most important factor in the economic life of the domestic business of the United States to the changed conditions of foreign policy and the changes in research, invention, processes, and organization. These are changing all the time. We are living in a period of flux. There never was a period in the world's history when industrial life was so precarious and so uncertain, and when the endeavor of industry to adjust itself to a rapidly changing environment was of such enormous importance to the people of the United States who find their livelihood in it.

That is what concerns us, and we are grateful to you because you have recognized that condition and provided machinery. All we ask you, in the light of that fact, is to make that machinery workable, and not destroy it, so that instead of providing us with a means of relief that we can not apply, you will provide us with a remedy the application of which will be available to us.

Senator WALSH of Massachusetts. What would you suggest?

Mr. EMERY. I do not want to suggest the safeguards with which you should surround the exercise of your power, because that is a matter within your judgment—whatever you think is necessary. But I do insist that if you do not put a limitation upon the time within which Congress will act on the matter, you will probably not provide any practical stimulus to legislative action. This would be a stimulus to legislative action, in my opinion.

Senator WALSH of Massachusetts. You favor, then, the House provision, limiting action on the part of Congress to 60 days. You favor that over—

Mr. EMERY. I favor the means of providing a stimulus. If you are going to pursue that course, then certainly you ought to fix the time. But for 140 years you have employed the President of the United States as an executive agency in these matters, and you have given him the broadest power. When it comes to the examination of executive power, if you suspect the President of the United States to have legally abused the power that he now exercises under section 336, I call your attention to the power you have given him under sections 337 and 338, without one critical word of dissent in either House of Congress.

Senator CONNALLY. Do you approve of that?

Mr. EMERY. I do; and I assume both Houses of Congress do, because no man in either House ever criticized it.

Senator CONNALLY. You are not criticizing it now?

Mr. EMERY. I am not. I am offering it as a reason why you can trust the executive agency to exercise an inferior power when you give him an opportunity to exercise a far greater one under section 337. On the mere suspicion on his part that a given commodity represents an unfair method of competition on the part of a foreign country he can issue an embargo—on a mere suspicion. You granted him that power. Furthermore, if he exercises that power he can deny entrance to the commodities of a whole nation. Under section 338 he can do it to third nations who may be the beneficiaries of the conduct of the first nation. You granted that power, and I want to add, furthermore, that there was nothing novel about it. The power has been granted by Democratic and Republican Congresses ever since the passage of the first tariff act, which was the second act that the First Congress passed.

Senator GEORGE. I just want to say, for myself that if Congress did it, I am far from subscribing to it myself. I do not think anything more clearly illustrates the absolute power of tyranny than the holding by the present President that the mere infringement of a copyright or of a patent right is unfair practice, within the meaning of that act. You had better leave the Congress to handle your tariff, even from the standpoint of the extremely high protectionist, because some time you may have a change of administration in this country. You are treading on very dangerous ground when you put the whole power in some administrative body.

Mr. EMERY. Senator, if there is any implication in your kindly question that I am representing those who are believers in a high tariff, I want to say that those whom I represent accept fully the formula which is here laid down, and which I understand the Senator from Mississippi, on behalf of his colleagues, stated in the Congress represented their view. That is that the rate that should be represented in a sound import duty is the ascertained difference between the relative foreign and domestic cost of production of the article. We accept that fundamental, and we say that any tariff rate in excess of that is an unfair rate. We say that any tariff rate below it is a rate that may threaten the standard of living and the industries of the United States. Our domestic market was never so important in the history of America as it is now. It is our last standby in the present state of the world. With the British ministry meeting last night in London and falling apart over its tariff policy, and being held together only by the pressure of necessity, the United States never confronted a condition as vitally important as this. Whether we like it or not, we are involved in the economic affairs of mankind as never before.

We are exactly like the man who went to the banker and tried to get a little more money. The banker said to him, "I am sorry, but I can not give it to you." The man said, "But I have got to have it." The banker said to him, "You can not get it, because you have been granted one loan. I can not give you another one." The man replied, "Were you ever in the cloak and suit business?" The banker said, "No, I have never been in the cloak and suit business, and I do not want to be." "Well," the man said, "you are now." That is our position in the economic affairs of mankind generally.

Senator COSTIGAN. Mr. Emery, are the business interests you represent unanimously in favor of flexibility in tariff adjustments?

Mr. EMERY. Yes, sir; all those I have the authority to speak for are.

Senator COSTIGAN. When did they become unanimous?

Mr. EMERY. They have been struggling for it for about 16 years.

Senator COSTIGAN. Did not certain of those interests formerly oppose, as disturbing to business, such flexibility?

Mr. EMERY. Of course, I can not identify what you refer to, Senator. If I could, I could answer your question more definitely. But I can say that a very large group of industrialists, representing every kind of industry, have for 16 years struggled to secure a method of adjusting the tariff in the light of ascertained facts, facts ascertained by an impartial commission, without resort to general revision. It is the general revision of the tariff that always represents a period of a year or a year and a half of uncertainty and instability; and it is difficult for industry to live during that period of anxiety, with the future before it unknown and its own commitments impossible. If that was true in the past, Senator, it is more true to-day than it has ever been in the history of our country, because changes are more rapid.

Senator COSTIGAN. Do you equally regard action by Congress on tariff matters as not disturbing to business?

Mr. EMERY. It would naturally depend upon the character of the change. It would be impossible to answer that in the abstract.

Senator COSTIGAN. Have you been satisfied uniformly with the recommendations of the Tariff Commission in the various cases on which they have passed in the last 10 years, under the flexible provisions?

Mr. EMERY. Of course, I can not speak, Senator, for all the parties who have been before the Tariff Commission, but I realize—and we all do—that the success of the commission is going to depend entirely on the character of the personnel. But we have confidence in its integrity and we are willing to abide by it. We think that for purposes of adjustment of the kind we have described, it represents a method of adjustment that is least disturbing to the industrial structure of the United States.

Senator COSTIGAN. Have your members been uniformly in agreement with the recommendations of the commission, that they have been wisely made throughout the last 10 years, or have your members been critical of particular recommendations?

Mr. EMERY. They might have been critical. I would not say they have not; but, generally speaking, I have heard little criticism. Of course, Senator, you realize that a disappointed litigant is never satisfied, and in all the years that I have practiced law I never heard of a loser who was content with the decision of the judge.

Senator COSTIGAN. The implication you gave is that the interests you represent have been satisfied and have not been disappointed litigants.

Mr. EMERY. I want to say that they believe the method, Senator, is satisfactory. Let me say further that this is one reason for it. The United States was, up to the time of the adoption of the flexible tariff, one of the few nations that had no flexible means of adapting its tariff policy to changing internal or external conditions. That has become more true since the war and particularly in the last

five years, than ever before. Practically every nation in the world with which we compete now has machinery equivalent to a tariff commission, or it has flexible machinery, through its ministry, and through orders in council, by which it can translate into effective action changes that affect the industry of that country in competition with every other country. Take Australia. We have had the experience of having shipments of American goods start for Australia, and having the rate of duty in Australia changed before they get there, and they were changed back again to meet the British competitor coming from the opposite direction.

Those are illustrations of the power possessed abroad to meet this situation, and that is why we need this flexibility if we are to compete on an equal basis economically with fortified competitors. That is why we are deeply concerned about the character of the policy that you gentlemen adopt in a matter of this kind.

Senator BINGHAM. The witness said something about the personnel of the Tariff Commission. I wonder if he would agree with me that under the chairmanship of Mr. Fletcher they acted much more speedily and expeditiously on matters of extreme importance than had been true previously.

Mr. EMERY. I think the present commission, as an operating body, from our study of it, has done about as much work in a year as the previous Tariff Commission did in three or three and a half years.

The CHAIRMAN. I think, however, that they had a great deal of past information and past experience that enabled them to do so. They had the basis established, and on that basis, of course, they could go immediately to work, and I think they have done well. I am not criticizing, but I do not think they have done so very much more than commissions in the past, when you take into consideration the circumstances surrounding the commission and the newness of the law put into operation.

Mr. EMERY. I am not criticizing, Senator. You will pardon me. The Senator will understand that I am not criticizing the commission in what they are doing. I am simply making a comparison in the volume of work done.

The CHAIRMAN. I only bring this out in fairness.

Senator COSTIGAN. It should be added that in the tariff act of 1930 more expeditious procedure was provided than under the earlier flexible provision.

The CHAIRMAN. That is true.

Mr. EMERY. We have the fruits of accumulated information, and we have better procedure. We are anxious to see the procedure steadily improved, rather than to have anything happen that would lessen the gathering momentum toward a better use of this machinery.

Senator HULL. Mr. Emery, would you kindly tell the committee how many reports the commission has made to the President, and on how many items the President has taken action, under the present Tariff Commission personnel?

Mr. EMERY. My recollection is that there were 39 completed recommendations under section 336, the one under consideration. I can not be sure about the number of cases in which the President has acted. Several cases were sent back to them for reexamination; but the commission, in addition to that, of course, has a very large volume of inquiries presented to it by the Congress. The Senate has

adopted a great number of resolutions, and so has the House, directing it to inquire into particular subjects.

Senator HULL. In how many of these 39 instances did the Tariff Commission ascertain the actual facts as to the difference in cost of production here and abroad, and in how many of those 39 instances did it merely infer the cost of production from the invoices?

Mr. EMERY. You are asking me, now, to pass upon the quality of the commission's work? I am not qualified to do that.

Senator HULL. There is no secret about it, is there?

Mr. EMERY. No; but they must work with the machinery at their disposal.

Senator BARKLEY. They had the same machinery in all cases.

Mr. EMERY. Yes, sir. They have the machinery that you have required them to employ.

Senator HULL. It is true, is it not, that, unlike former commissions, this commission has adopted a policy of simply inferring the foreign costs from invoices, rather than ascertaining the actual facts, with very few exceptions?

Mr. EMERY. I was going to say, Senator, that they use the invoices as prima facie evidence, and where they can get further information they use it; but we have discovered, by hard experience over a very long period, that that requirement that we should get our information from foreign sources and in foreign countries, was very difficult of practical application.

Senator BINGHAM. And it also involved very long delays.

Mr. EMERY. We met the resistance of foreign countries, and in some cases they came to our State Department and demanded that our officers should entirely cease their inquiries. That was notably so in France. They made an official protest against American inquiries made over there.

Senator HULL. There was no serious effort, was there, to ascertain the actual, concrete facts, as to foreign production costs when the Smoot-Hawley bill was framed, was there?

Mr. EMERY. I beg your pardon.

Senator HULL. I say, there was no serious effort there, because it was impossible, to procure actual, concrete facts as to foreign production costs as a basis for framing the so-called Smoot-Hawley bill.

Mr. EMERY. I assume that the committees both of this body and of the House operated in the light of all the information that was put at their disposal by parties at adverse interest, or otherwise, together with the investigations that the commission had made up to that time. They had all the information they could get, I assume.

Senator HULL. I am trying to be frank in helping to bring out the fact that, while we hear a vast amount of talk about using actual, concrete facts as to foreign production costs as our basis for prescribing tariff rates, in point of fact neither the Smoot-Hawley bill nor the Fordney-McCumber bill, nor the tariff action of this present Tariff Commission personnel have been based, to any great extent whatever, on these actual costs.

Mr. EMERY. I can not give you a complete answer. I will give you just as frank an answer as I can, Senator, if you ask for information. I think they have tried to do it just as closely as they could, with the information in their possession.

Senator HULL. I am not speaking about that. I am speaking about the actual facts. I am not criticizing anybody. I am simply trying to get the true facts.

Mr. EMERY. I think we are getting more and better information, and I think the administration of the law is improving. Ninety per cent of the tariff law is administration. That, alone, makes it effective. A mere increase or decrease in the rate amounts to nothing unless the administration of the law is effective.

Senator HULL. You do not pretend to insist seriously that it is possible for this Congress or this Tariff Commission, or any other body, to procure the actual facts as to foreign production costs, on which to base any general tariff revision in any direction?

Mr. EMERY. Yes; I think they can acquire approximately accurate information, and that is about all that can be obtained as a basis of action in those fields.

Senator HULL. You mean from the invoices and other information we have here?

Mr. EMERY. Yes. We can take any particular case and make an approximately close estimate of it, because we have a variety of sources of information. The American competitors of foreign industries are making just as accurate a study as they can of their costs, just as foreign competitors are studying ours, and whenever you have the testimony of competitors in business you come pretty close to getting accurate statements, or approximately accurate statements, because if the gentlemen themselves did not know it, their business would not survive.

Senator HULL. Your theory, then, is that it is entirely feasible to get the foreign costs, not only of industries, but of individual businesses in those industries, without ever seeing their books or even copies of their books, showing their actual costs?

Mr. EMERY. My answer to that would be, Senator, that the information would by no means be as accurate as it would if they had access to the sources of information you suggest; but I do say that we have secondary sources of information, especially under the penalties that are levied upon false import or invoice statements to-day, that are bringing the matter up very rapidly to a more accurate state. I think we are gaining in accuracy.

Senator HULL. So that pretty soon we will not even have to think about what the books of these foreign concerns actually show about their facts with respect to production costs?

Mr. EMERY. No. I do not say that for a moment, any more than I would expect our foreign competitors to determine accurately how their rates shall be imposed, without access to American books, which they have not got. I am not debating that at all.

Senator HULL. Exactly. I am simply getting tired of what I think is an actually fraudulent representation. I do not attribute it to any particular person or any particular political party, but the notion that it is possible to go abroad and get at the actual facts, as shown by the accounting systems of those industries, is ridiculous.

Mr. EMERY. Of course, if we were talking in mathematical terms, you would be entirely correct. But when we handle it as we do human testimony in other fields, it will carry substantially as much accuracy and veracity as human testimony in other fields—even admitted in courts of justice.

Senator THOMAS of Idaho. You state that there have been 39 cases passed upon.

Mr. EMERY. That is my recollection. I thought I had the figures here. There are about 148 investigations, I believe—

Senator THOMAS of Idaho. Do you recall how many of those decisions that have been handed down were unanimous decisions?

Mr. EMERY. No; I could not tell you.

Senator THOMAS of Idaho. Were some of them divided?

Mr. EMERY. It is not my impression. It may be the fact. I could not tell you that offhand.

Senator THOMAS of Idaho. I am just wondering if there had been really unanimous action by this commission on its reports, or whether it had been a divided or semipolitical action.

Mr. EMERY. I may be wrong, and I would not want to misinform you, but my impression is that it has been fairly unanimous action. But, of course, Senator, I think we know that quite often even the Supreme Court of the United States can not reach unanimous conclusions on mixed questions of fact and law, nor can the courts of any other State; and if we are expecting more unanimity from a body of this kind than from our courts, we would be expecting the humanly impossible.

Senator THOMAS of Idaho. I have been impressed, in the reports I have seen, with the unanimity with which they have acted.

Mr. EMERY. I remember making a comparison with the reports of the former commission before the passage of the act of 1930, and I was impressed, as you were, with the general unanimity of the reports. The percentage of disagreements was very small. I think it was about 5 per cent. That is my recollection. I may be wrong.

Senator THOMAS of Idaho. I thought you might have the number. That was the reason I asked the question.

Mr. EMERY. I do not have the statement before me, because I did not think that line of inquiry would be pursued. I would be very glad to give it to you.

Senator WALSH of Massachusetts. Mr. Emery, I have found among the manufacturers in my State two different opinions in regard to the flexible tariff. One group, who are protectionists, and who are thinking of the immediate future, favor the present existing flexible provisions of the law. Another group, who are students of the tariff and who are thinking in terms of the future, and who are protectionists, fear the principle being ingrained into the legislation of the country and are inclined to believe that the safe policy for the manufacturers, in the long run, would be to leave the question to Congress. Have you observed that difference of opinion?

Mr. EMERY. Yes; because in the course of discussion that preceded the position taken here, we have had discussions in all parts of the United States, with all types.

Senator WALSH of Massachusetts. I have observed that thoughtful students of the tariff have looked with a degree of fear upon the whole principle of flexible tariff.

Mr. EMERY. I would not want to join in your characterization of all those in favor of a flexible tariff, Senator. You are separating the thoughtful and the nonthoughtful into two very distinctive classes, in which my clients would unhappily be lost.

Senator WALSH of Massachusetts. I am thinking of those who are concerned because of the fact that they are sure that the present Tariff Commission is inclined to favor protection itself, and who fear that there may be a political change in the country in a few years and that possibly a radical Tariff Commission would very quickly ask for its repeal, and hasten to leave the question to Congress. I think you agree with me about that.

Mr. EMERY. I am interested in noting that political leaders on both sides—whether it was Mr. Wilson as President of the United States, or Mr. Smith as a candidate for the Presidency on the Democratic side, or the Republican leaders on the other side—have made emphatic statements about the importance of the tariff commission, about the importance of the work of investigation, about the importance of undertaking to predicate future tariff adjustments and rate making on ascertained facts; and these repeated statements have been so strong that I assume that they represented a very high degree of carefully prepared opinion upon the part of men whose intellectual qualifications were such that they were candidates for the presidency.

Senator WALSH of Massachusetts. You do not fear, therefore, no matter which party is in power, a destructive attitude toward the tariff?

Mr. EMERY. Not if the commission is independent. If the commission is not an independent body, if it is serving masters, if it represents the political partisanship of either party, which is a worthless body, we realize the difficulty. The value of the Interstate Commerce Commission lies in the fact that it is a rate-making body that is independent. The value of the courts lies in the fact that their function is to ascertain facts and apply the law. The moment they begin to lose their independence, of course, their practical value is lessened. I can not insist too strongly on the fact that we are discussing this whole matter from the viewpoint of as nearly an independent and impartial tariff commission as is humanly possible. I recognize human frailties in this matter, but I think the Tariff Commission upon the whole has been fairly free from that; and it should be kept free. The moment that its independence is lessened so its integrity is under suspicion, the commission's work declines in value.

Senator THOMAS of Idaho. Do you think it is really possible to keep the Tariff Commission absolutely independent in its actions?

Mr. EMERY. I think you can keep it independent of prepossessions. It is pretty difficult to find any man who would be qualified to serve on a tariff commission who did not have some views, I suppose, on the subject of tariff. You can not get a vacant mind or a perfectly blank one, but you can get men who would act just as I suppose the judges act on the bench. Lots of them happen to have preconceived opinions, but when they get on the bench they try as nearly as they can to discharge the judicial function without regard to them.

Senator CONNALLY. You said awhile ago that the whole administration of the Tariff Commission depended upon the personnel of the commission.

Mr. EMERY. I say that its value will depend on that chiefly, on its integrity and on its capacity.

Senator CONNALLY. You stated, of course, its value also depended upon its being an independent commission.

Mr. EMERY. Yes, sir.

Senator CONNALLY. Of course, you are aware, are you not, that the President can remove a tariff commissioner whenever he gets ready?

Mr. EMERY. Certainly.

Senator CONNALLY. When you spoke of the independence of it, and so on, did you have in mind the case of Mr. Lewis when Mr. Coolidge demanded of him to give his resignation in advance, which he could accept at any particular time?

Mr. EMERY. I think I recollect that story.

Senator CONNALLY. I know; but did you have that in mind when you spoke about the Tariff Commission; that it would have to be independent?

Mr. EMERY. It did not occur to me; but I would not hesitate to condemn the action of any President, no matter which party he belonged to, who made the members of the commission dependent upon him for their viewpoint. We say very frankly, Senator, that we have no use for a commission that represents a party interest on either side.

Senator CONNALLY. If they are removed at will by the President, do you feel that they act independently?

Mr. EMERY. Every executive officer of the United States may be removed at will.

Senator CONNALLY. That is true. That is why I am presenting the matter in that way. You are not willing to trust the Congress elected by the people, but you are willing to trust a commission that holds its tenure with hands uplifted on its bended knee to a President who can remove at will, and yet you talk about an independent Tariff Commission. That is why I give the instance—an outstanding example—of Mr. Coolidge demanding that a tariff commissioner give him his resignation in advance; and then you speak about an independent Tariff Commission, and you say that its whole usefulness depends upon its independence.

Mr. EMERY. Yes, sir.

Senator CONNALLY. And yet you have in mind those particular aspects of the situation?

Mr. EMERY. Yes, sir. I can not reply to the Senator with the characteristic eloquence that marks him, but I say that he——

Senator CONNALLY. I object to these inducements and allurements. [Laughter.]

Senator BARKLEY. I think the Senator ought not to admit he is so weak as to be influenced by them.

Senator CONNALLY. I do not want to seem to be.

Mr. EMERY. I simply want to insist, Mr. Chairman, all the time that all of the objections the Senator makes to the independence of the Tariff Commission are equally applicable to the independence of almost any other human tribunal. We have had judges who failed in their duty and were unduly influenced; and if you press the argument the Senator carries too far, it is an argument against all forms of human government.

Senator CONNALLY. Oh, no. It is just an objection to the transfer from the constitutional body of the Congress of its power to a commission that is under the domination and under the bludgeon of an executive officer who is actuated very frequently by political considerations.

Mr. EMERY. Well, some of the noblest and most eloquent addresses that ever took place on the floor of the Congress were assaults upon the Executive whose party, being in power, was preventing a minority from expressing its views. It is limited, in that connection, in the manner here described. So the legislative branch has not been free from executive influence in party leadership. As far as that is concerned, we are in the same position with regard to the appointment of any administrative body where political power is exerted that we are in the case of the authority of a legislative body under a party system. We can make this body more independent, and I am sure that the gentlemen sitting around this table have again and again been striving to make such bodies that exercise great powers, like the Interstate Commerce Commission and the Tariff Commission, increase their independence. This is a great experiment, and we are either going to abandon the struggle or we are going to try to improve upon its operation. That is what we are struggling for.

Senator THOMAS of Idaho. Have you any suggestions as to how you are going to improve upon it?

Mr. EMERY. I have been trying to make them, Senator. I have been trying to make them in line with the proposition that is before you now.

Senator HARRISON. May I inquire in connection with the questions asked by the Senator from Texas (Mr. Connally): I understood you to say that since the reorganization of the commission there have been about 39 reports made to the President. I understood you to say that there were two or three of them that had been sent back, and that the proclamation had been sent back for further inquiry. That is my recollection.

Mr. EMERY. There were some changes in it.

Senator HARRISON. They were cases where the commission had recommended a reduction of rates, were they not?

Mr. EMERY. I do not recall.

Senator HARRISON. You do not remember these particular cases?

Mr. EMERY. No; because, frankly, I am not interested in the question of whether the particular issue before them is reduction or increase.

Senator HARRISON. I understand; but if this new commission had sent in some recommendations for reductions and the President had sent them back, would you construe that as an influence upon the commission to get them to change their recommendation?

Mr. EMERY. It would depend upon the facts in the case. Not necessarily.

Senator HARRISON. You do not know enough about the facts in these particular three cases to say?

Mr. EMERY. No, I do not. I do not know about the facts in any particular cases.

The CHAIRMAN. There were 39 reports made under the present bill.

Mr. EMERY. Yes.

The CHAIRMAN. Reports to the President; and there were only two out of the 39 reports that were refused.

Senator HARRISON. And they were for reductions?

The CHAIRMAN. I think one was.

Senator HARRISON. What was the other one for?

The CHAIRMAN. I think it was an increase.

Senator HARRISON. What is the one for reduction?

The CHAIRMAN. And not only that; those two cases are now being investigated. At the present time a reinvestigation is being made by the commission.

Senator HARRISON. That is a case which originated in Oregon, Mr. Hawley's state.

The CHAIRMAN. One of them was. What does the Senator intend to imply by that?

Senator HARRISON. I intend to imply exactly what the facts show—that this great independent organization of which Mr. Emery speaks is at least trying to influence the commission to not accept the finding the President sent back.

The CHAIRMAN. Two of them were sent back for an investigation, and that is all. One was settled and one is yet unsettled out of the 39 that have been reported.

Senator BARKLEY. How many actual increases have been made out of the 39 reports?

Mr. EMERY. I think there are more decreases than increases. That is my recollection. I have not the data before me.

Senator BARKLEY. I mean of the 39, of the number the President has acted on.

The CHAIRMAN. There were 17 decreases and 12 increases.

Senator BARKLEY. Some of the decreases were on immaterial propositions and some increases were on very important propositions.

Senator WATSON. How do you expect to make this Tariff Commission more independent? It has three Democrats on it and three Republicans. It is supposed to be an entirely nonpartisan proposition, and we fought to make it so. Senator Harrison remembers very well.

Senator HARRISON. We did not get it as nonpartisan as we wanted to.

Senator WATSON. What do you mean by that?

Senator HARRISON. The thing as originally suggested was modified and changed and altered in conference considerably.

Senator WATSON. But you remember, Senator, the fact that there were four of one party and three of another?

Senator HARRISON. Yes; I remember the whole fight, and I know how you shenanigans went on.

Senator WATSON. Shenanigan nothing. I made the fight myself for three Democrats and three Republicans.

Senator COUZENS. Let us get on with the hearing.

The CHAIRMAN. Out of those 39 cases, those in which increases were specified were valued at \$17,000,000. Those in which decreases were specified were valued at \$44,000,000. Those in which on changes were specified were valued at \$137,000,000.

Senator GEORGE. I say the Tariff Commission itself must have made them out, Mr. Chairman.

The CHAIRMAN. Of course, they had to make the report. Nobody else could do it.

Senator GEORGE. We are relying entirely upon them.

Senator WALSH of Massachusetts. Let us proceed with the witness, Mr. Chairman.

The CHAIRMAN. Yes. Proceed, Mr. Emery.

Mr. EMERY. I confess, Mr. Chairman, I am somewhat surprised at the implied attack upon the qualifications of any commission to

discharge these duties when, under the State of the legislative theory which both parties accepted and which is expressed in this bill and every bill relating to the subject, I desire to rely—

Senator GEORGE. May I interpose right here? It may be all right to say "both parties," but I certainly never voted for this bill. I voted against the entire bill, and practically all the Democrats did vote against it. That is not the provision that we fought for in the bill. It is not quite fair to keep on repeating that statement here.

Senator WATSON. I think what Mr. Emery meant was the principle involved in the functioning of the Tariff Commission.

Mr. EMERY. That is exactly what I meant.

Senator HARRISON. We all agree that it ought to be independent and free from influence.

Mr. EMERY. Yes, sir; just as soon as you can make it; and I assume that the Senator agrees that the formula that is here presented is the best upon which the rate adjustment should take place.

Senator HARRISON. Oh, no; we have an entirely different formula which we will present.

Mr. EMERY. I beg your pardon, I mean the fundamental formula.

Senator GEORGE. No, sir. That is just exactly where you are wrong. We offered a proposal to put the question of ascertainment of cost, difference in cost, as one element to be considered, but not by the President and not with any final authority in the commission to act upon it, but to report it back to the Congress. That was the proposition.

Mr. EMERY. I understand that part of it, but what I started out to say was, if the Senator will just permit me to finish that sentence: I assume that the Senator agrees upon the proposition that the fundamental formula in fixing rates is the determination of the relative cost of the competing foreign and domestic article production cost. That is the fundamental proposition.

Senator HARRISON. The facts were to be ascertained on the difference of cost in the formula that was suggested?

Mr. EMERY. Yes, sir; but I mean the formula on which any bill is to be fundamentally written is that formula.

Senator HARRISON. That was the proposition; but there were provisions that were imposed upon the commission in the ascertainment of the difference of costs.

Mr. EMERY. All I have insisted upon, Mr. Chairman, when I referred to the view of both parties which lies at the bottom of this legislation, was that they agree that the formula for the determination of the rate was the ascertained relative cost of production between the foreign and domestic competing article.

Senator GEORGE. That is simply one element, an important element but one only. There are an inconceivable number of cases on which the Congress, I apprehend, would never think of imposing a duty to equalize that difference upon the broader ground that that particular industry could not be economically carried on here at all. So it is only one element. It is an important element. Conceding that there is to be a duty imposed, it does become, of course, a very important if not a controlling element. But what I am objecting to is the constant repetitions that both parties here now in Congress have committed themselves to this particular flexible provision.

I certainly have not and very few Democrats voted for the bill in that form.

Senator HULL. Senator George, I want to concur in your view, where you have stated it there.

Senator WATSON. After the fact is found, we want to send it to the President and you want to send it to Congress.

Senator HARRISON. That is what we stood for right along.

Senator WATSON. That is the big difference between the two.

Mr. EMERY. All I said, Senator, up to that point you are in agreement with on the formula of this bill? I am talking about the bill that passed the House and is before you now.

Senator HARRISON. Not exactly that. As stated by Senator George, we did give to the commission the authority to ascertain the difference in cost. We wanted to lay down a good many more rules which were objected to, and we did not incorporate, which we hope to have incorporated in this legislation.

Mr. EMERY. I took the Senator's fundamental statement as the basis of my thought made in Congress on January 13, 1931, when, with the authority that belongs to your high position, you stood for the proposition, as did my colleagues all stand for the proposition, that we believe in imposing such duties as would equalize the difference between the cost of production here and abroad.

Senator HARRISON. That is one of the factors, and that is equally stated on the Simmons proposition; but there are innumerable other propositions that have got to be considered.

Mr. EMERY. I realize that.

Senator HARRISON. Here is a proposition of one one-thousandth of 1 per cent of the importations of an article where the production cost is different. That is a factor in putting the rate on.

Mr. EMERY. That goes to the practicability of the duty. I realize that.

Senator HARRISON. And the difference in transportation cost. There are innumerable factors.

Mr. EMERY. The elements that make up the cost of production all run back to the same fundamental principle.

If I may hurry on, with your indulgence, Mr. Chairman, I just want to call your attention to the fact that the provision of the bill here which relates to the limitation on the amendment of any bill before the Congress to carry out the recommendation of the commission, it seems to me is very clearly in contradiction of the most fundamental requirement of the Constitution, because Article I, section 5, provides clearly that each House shall determine its own rules, and that has been held to mean not only that you are not governed by the rules adopted by a preceding House if you choose to change them, but you are not governed by any law that expresses a rule adopted by a preceding Congress. That is, you can always adopt the rule you please; you can not bind the House or the Senate, by statute, to the adoption of a particular parliamentary practice.

Senator WALSH. Do you think we would have to have a constitutional amendment?

Mr. EMERY. You could adopt any rule in either House, but I mean you can not by statute compel either House to accept a particular parliamentary rule for the amendment of a bill.

Senator CONNALLY. That is the first thing you have said this morning that I have agreed with you on.

Mr. EMERY. Thank you, Senator. We are approaching unanimity. There is only one other thing I disagree with you on.

Senator GEORGE. Both Houses could adopt it by rule.

Mr. EMERY. They could; yes, sir.

Senator GEORGE. If both Houses were to solidly cast a law, it is assumed that they would adopt it by rule, is it not?

Mr. EMERY. Well, I do not know. It depends on the complexion of the Houses and the state of mind when they come to consider it later; but they can not bind themselves or they can not bind the other House by statute.

Senator GEORGE. Oh, no. Nothing we pass this year would be binding on the next Congress anyhow; certainly not.

Senator WALSH. Assuming they could be bound, do you not think that provision is a good one, to limit the making of amendments to a proposition?

Mr. EMERY. Certainly. Even if you were going to adopt that policy, if you would limit it to a subject which had received investigation by the commission and made the subject of recommendation, that would be a decided limitation.

Senator COUZENS. It would be a very unwise limitation, it seems to me, with changing economic conditions all the time.

Mr. EMERY. Of course, as to the parliamentary effect of the amendment I can not speak; but I notice in an act like the one presented here the title is so broad, if you approach it from that standpoint, it is open to a definite amendment. This, for instance, is not merely an act to amend or substitute section 336 of the act of 1930; this is a bill to amend the tariff act of 1930 and for other purposes. That is about as broad a title as you can put on a bill. I suppose under that practice that would be open to almost unlimited amendment.

Senator HARRISON. Yes; if considered for other purposes, it would mean a great deal.

Mr. EMERY. That is what I thought.

Now, I wanted to call your attention to the provision here with regard to a consumers' counsel. We have met with considerable difficulty in determining precisely what is meant by that. The provision of law here is that there shall be in the legislative branch of the Government an officer known as the consumers' counsel of the Tariff Commission, who is appointed by the President with the advice and consent of the Senate. And then there are provisions as to his eligibility, but his duty is to appear and represent the consuming public in any proceeding before the commission.

First of all, we venture to call your attention, Mr. Chairman, to the fact that the Tariff Commission is an investigating body confined to one function, the ascertainment of relative costs of production with regard to the commodity which is before it. It hears the parties, but it conducts its own investigations, all over the world for that matter. It is confined to an inquiry. It seems to seriously reflect upon the commission to suggest the necessity of appointing a counsel to represent any interests before the commission, because there are no interests before the commission as such or to emphasize one interest rather than another. And when you come to the actual application of it, who is the consumer that appears before the commission, or the

producer? You gentlemen who are acquainted with practical affairs know there is no such thing as the arbitrary division of the people of the United States into producers and consumers, or you can not divide any one particular man's activities into that—which are the producers and which are the consumers. Take the great company with which you were once connected, Mr. Couzens. The Ford Company is an enormous consumer. It is a producer of automobiles, but it is a consumer of service, of fuel, or raw material, of transportation, of everything else that enters into the conduct of its enormous business, and you can not separate those functions.

Now, if you talk about the consumers' counsel who is to appear here and represent some consuming interest, just whom would he represent in a proceeding there? For example, suppose an agricultural interest of the country appears before the Tariff Commission and seeks an increase or a decrease in a particular rate. It would be there as a producer. Would the consumers' counsel appear in opposition to those who raised foodstuffs, who fed the nation, and whose material lay at the bottom of most of our industrial enterprises? I do not assume that is in anybody's mind. Would he represent the automobile interests in a conflict with the steel interests over the raw material out of which their machinery was made? What consuming interest would he represent? Is he supposed to be representing that unidentified and still unfound individual with whom everybody sympathizes but nobody has ever been able to get acquainted with, the ultimate consumer? His function is certainly not defined. If he is to have some very definite function, then it ought to be very carefully defined.

Senator HARRISON. I do not know how you would define it.

Mr. EMERY. I do not know whom he is to represent, Senator.

Senator HARRISON. If there was a question before the commission of putting a tariff on automobiles, you would have no doubt where this consumers' counsel would be, would you?

Mr. EMERY. I do not know.

Senator HARRISON. Would not you construe it he was representing the buyers and the users of automobiles—the consumers of automobiles?

Mr. EMERY. That might be in that case; but in the case I refer to, suppose the agricultural interests of the country are over there in a matter relating to cotton or wool, and they want an increase in the tariff—

Senator HARRISON. He would represent the consumer.

Mr. EMERY. Then would he represent those who buy wool and buy cotton?

Senator HARRISON. Yes.

The CHAIRMAN. Let me ask you a question. Do you construe that means that this consumers' representative, in order to be posted, would have representatives in all parts of the world, as the full commission has, and they collect the evidence there to combat the evidence that is collected by the Tariff Commission's representatives that they have now in every part of the world? Would not he have to have some information to base an objection upon, and is there any other way of obtaining it other than the way that it is being obtained now by the Tariff Commission?

Mr. EMERY. Of course, his activities are going to depend on how much we appropriate for him. That limitation is over here, but in the House bill they struck out a provision that directly authorized an independent investigation. This is limited now to requiring the commission to provide him with any information it has, and then also requiring the commission to conduct any investigation that he requires. So he becomes the director of the commission's investigation in any direction which he thinks necessary to discharge his function, whatever it is. It is a very indefinite function in here except in this general statement, which would seem to emphasize the commission's requirement to consider a consuming interest or give it paramount consideration in any proceeding before it. It is placing undue emphasis, it seems to me, on any particular phase of the inquiry which a body, which is fact-finding in its nature, is required to pursue.

Senator COUZENS. Do you not think, Mr. Emery, that the contest between the importer and the producer in this country may be relied upon to protect the public interest?

Mr. EMERY. I think that the commission represents the public interest first, and the parties before it have such economic conflict of interests that they take care of their own position.

Senator COUZENS. And between the two, the public is taken care of, do you think?

Mr. EMERY. I do not know just whom he represents there, Senator.

Senator COUZENS. I mean the consumer that Senator Harrison was just talking about. I think we know what he is referring to.

Mr. EMERY. I assume the commission takes care of him. That is its business. It has nothing to do with one interest or the other.

Senator HARRISON. Is it not true that the importer at times and the manufacturer have got together on a proposition and that the public was left out of consideration? The hearings reveal, for instance that this new independent commission of which you speak gave an increase on Fourdrinier wire, notwithstanding an increase Congress gave; they gave a further increase, and the evidence shows that the manufacturers of Fourdrinier wire in this country and the importers got together and fixed the price. You are not familiar with the proposition?

Senator GEORGE. If you want an independent Tariff Commission you have got to leave the commission in a position where they can be presumed and assumed by all fair-minded men to stand equally and impartially as between the conflicting interests.

Mr. EMERY. Absolutely, Senator.

Senator GEORGE. Well, then, is it not necessary to have somebody to represent those who are not interested as producers; that is, immediate producers or immediate importers into this country, who have already produced articles? Is it not necessary to have some one representing that large class of people?

Mr. EMERY. If he is going to have a very definite function, Senator, it ought to be defined. It ought to be defined more than this general statement that appears in here defines it. For example, we do not find it in other boards or commissions, although they deal with matters which are of profound importance to consumers that serve them locally. Here is the Interstate Commerce Commission regulating the transportation system of the United States, and before it appear those

who apply for increase of rates and those who apply for decrease of rates. Before that commission appear all those that provide transportation for the business of America. Before them are the consumers of transportation or their passengers, and those who give them freight. Yet you never thought it necessary to appoint anybody to protect the public interest in transportation. The commission does that. This body, it seems to me, is a mere fact-finding body. It is not concerned about the interest of one party or another, but about a certain state of facts on which to predicate its finding. It throws a suspicion upon the integrity of the body if you appoint a guardian to watch it.

Senator GEORGE. Mr. Emery, if you do not recognize the fact that the Tariff Commission has been strongly under suspicion in this country for many years, then you are just talking over our heads and always will be, because it is dealing with partisan issues.

The CHAIRMAN. If a decision of the Tariff Commission is wrong, then it becomes important.

Senator GEORGE. It has been subject, Mr. Chairman, to the most severe criticism. It has been investigated by a committee appointed by the Senate.

The CHAIRMAN. Certainly.

Senator GEORGE. And the inquiry has gone to the particular personal interest of members of that commission, and yet Mr. Emery insists upon arguing the matter as if it were such an impartial body that its partiality or impartiality has never been called in question by anybody.

Mr. EMERY. What I am arguing is, I do not perceive the relationship of the individual proposed here. As to the preservation of the integrity of the body, I do not see it performs any useful function.

Senator GEORGE. Perhaps you do not.

Mr. EMERY. If you can call it in any way the integrity of the commission.

Senator GEORGE. Perhaps you do not; but if you are saying that the body itself is the one that may be confidently relied upon to protect this great part of our population which is not directly interested as a producer—that, is the actual parties to a controversy over rates—you are simply ignoring the facts. It seems to me that the commission, since it has been given the enlarged powers, has never been wholly free from some suspicion.

The CHAIRMAN. Senator George, the importers claim they are looking after the interests more of the consumer.

Mr. GEORGE. Oh, yes.

The CHAIRMAN. That is the position they are now taking.

Senator GEORGE. And the manufacturers claim they are. Why should not there be somebody there who represents what we will understand to be the parties not directly interested in that controversy?

Mr. EMERY. Pardon me, Senator. May I ask this question? I ask it very honestly for information. Do I understand your view that the consumers' counsel in any controversy before the commission would represent the interests of the applicant before the commission who consumed the product which was the subject of the inquiry?

Senator GEORGE. Oh, no; that is not my view at all.

Senator HULL. Mr. Emery, would it be any more satisfactory to you to use the term "ultimate consumer"?

Mr. EMERY. Any more satisfactory to me? Then you would have to hire Sherlock Holmes to find him.

Senator HULL. That was a very well-recognized term back from 1909 on for a great many years.

Mr. EMERY. I think it always has been for purpose of discussion, but he has always been very hard to identify.

Senator HULL. So you had as much difficulty about that phrase as you have about the present one?

Mr. EMERY. Yes, sir. I simply call that to the committee's attention because I think it requires definition if we are going to have it in there.

Senator THOMAS of Idaho. This consumers' counsel would, naturally, be fighting all the time for reduced rates?

Mr. EMERY. I do not know whether he would be, but he would be fighting all the time for what he conceived to be your building up of a body in there to represent some certain group before the commission, whatever it may be. I do not know what form it may take.

Senator THOMAS of Idaho. Would it be proper to term him as an importers' counsel?

Mr. EMERY. He would certainly be, I assume, from the nature of his duties as described here, always in favor of a decrease in any rate. He would always oppose an increase.

Senator THOMAS of Idaho. He would be representing the importers in nearly every instance in the presentation of these cases before the commission?

Mr. EMERY. He would under my conception of a consumer; but Senator George does not agree with me that he would represent the consumers' interest and that he would not represent a partisan interest.

Senator GEORGE. He would represent what he really believed to be a sound tariff in justice to the people of the country, both the manufacturer and importer and those who consume the articles manufactured.

Senator COUZENS. May I put a hypothetical question to you, Mr. Emery?

For instance, if this consumers' counsel was appearing before this commission and he was protesting against the duty on automobiles, for example, and the manufacturer and those employed in the manufacture of automobiles would be wanting a tariff for protection, would not he be on two sides of the fence, in one case asking for lower duties to protect the millions of workers who use automobiles and at the same time trying to protect or defeat, rather, their object of a tariff who sustain their standard of living?

Mr. EMERY. That is the way I see it, Senator.

Senator COUZENS. I am very much confused. I do not see how you can get at them, because the automobile workers may be pleading for a tariff and the consumer would be pleading against it.

Mr. EMERY. That is true with regard to enormous numbers.

Senator GEORGE. Suppose you change the word "consumer" to "people." You are just playing on words, Senator.

Senator COUZENS. Honestly, I am not.

Senator GEORGE. Suppose you say "people." Has not the body of the people an interest in the tariff controversy between an importer and a manufacturer that is somewhat different from the interest

either of the importer or the manufacturer? He might believe that both were written in a measure of sound policy in that instance, but there is an interest there that is not represented directly by anybody before the Tariff Commission in your sharply-drawn issue over a tariff rate.

Senator COUZENS. Would he control the question of facts?

Senator GEORGE. Oh, no.

Senator COUZENS. I thought this was a fact-finding commission.

Senator GEORGE. It is a fact-finding commission. It was intended to be a fact-finding commission.

Senator COUZENS. That is my impression.

Senator GEORGE. He might be able to present some views that would be helpful to this fact-finding commission, and he might save it in my judgment. He would ultimately save it from the suspicion that the commission itself was being controlled by either the one side or the other to the litigation. He would help to save it because he would have an independent status before that commission.

The CHAIRMAN. Could you finish your testimony Tuesday morning?

Mr. EMERY. I am through, sir. I regret very much that my presence has delayed a message of such importance.

Senator HARRISON. He says he is through.

Senator COUZENS. We have got to hear him Tuesday.

The CHAIRMAN. Are you practically through?

Mr. EMERY. Yes, sir.

Senator THOMAS of Idaho. There might be some questions we would want to ask.

Senator COUZENS. We have the Tariff Commissioners, Tuesday.

The CHAIRMAN. Then we will fix the time.

Mr. EMERY. Mr. Chairman, there is just one additional statement I might make, because the Senator says he has some questions he might wish to ask.

The CHAIRMAN. All right. We will notify you, then.

STATEMENT OF HON. OGDEN L. MILLS, THE UNDER SECRETARY OF THE TREASURY

Mr. MILLS. Mr. Chairman and gentlemen of the committee, I am a little at a loss to know why the Treasury should be invited to appear before you and express a view as to this bill, which after all, really involves the question of policy for the Congress to determine. The question of policy is one with which you are so familiar that there is literally nothing to be added on one side or the other after the valuable discussions which took place during the course of the enactment of the last tariff law.

Speaking in a very general way, it seems to me that the tendency of this bill, certainly in so far as the earlier sections are concerned, is to get away from the conception which underlies the present bill and which I thought, on the whole, had been pretty generally agreed to, and that is that Congress having laid down the tariff policy as indicated by a schedule of rates, should be willing to give the whole tariff law certainly a degree of flexibility by creating a body that within certain definite, specified limits could amend those rates to meet rapidly changing conditions such as constantly occur in a modern economic world.

Now, then, this bill does depart from that very definite principle of conception in that this bill is calculated not only to delay action to meet these current changes, but it seems to me that it is calculated to keep the tariff controversy eternally before the Congress. It seems that is almost unavoidable except in so far as very minor matters are concerned; but any major question, no matter what you write into this bill in the way of limitation as to amendment, must almost inevitably bring several schedules before the Congress and bring the whole tariff question up. Now, it seems to me that is a very serious danger. We all know when we have a general tariff revision extending over the course of months what a period of doubt it creates in the mind of business, and here you have a bill that, wherever this Tariff Commission makes a report, if it is an important report you are bringing the whole tariff question before the Congress.

Senator COUZENS. May I suggest also, would not a provision of this sort invite filibusters in the Senate if there was a rule against the amendments?

Mr. MILLS. Senator, I hesitate to express an opinion as to what would happen in the Senate, but it seems to me that opportunity would be afforded. Moreover, no matter what you might rule, supposing the presiding officer rules that an amendment is not germane, an appeal could at once be made and the majority of the Senate could hold that it was germane and open up any number of schedules. This bill really is calculated, it seems to me, to keep the whole tariff question perpetually before the Congress, providing the Tariff Commission sits continuously and makes reports frequently enough as to major questions. As to minor questions I assume no action would be taken and the 60-day clause would be effective.

As to the consumers' counsel, I must say I have some doubt. I do not know that the consumers' counsel can do any harm, but in these days, when it is very necessary to reduce the cost of government, you cannot help having some question of creating a new office, another expensive head of some bureau, and giving him all of the assistants and clerks and investigators that he needs to perform a function which, it seems to me, really should be assigned to the Tariff Commission. Having in mind what Senator George said about representing the whole people, I would say the Tariff Commission represents the whole people and if they do not in this measure, you have shown that you are not willing to trust the Tariff Commission by requiring that the report be made back to the Congress, and surely the Congress of the United States represents the whole people. Under those circumstances, if you want a consumers' counsel who, as I understand it, from my good friend, Senator Harrison, is to perpetually be on the side of the lower rate—

Senator GEORGE. He said the consumers.

Mr. MILLS. I listened with very great interest to your interpretation about what his duties would be, and it seems to me his sole function, irrespective of the merits, always would be for the lower rate, because that, presumably, would be in the interest of the ultimate consumer. So here you are creating a Government officer with a staff always to argue for a lower rate before another Government body that you have created in order to make an impartial ascertainment of the facts.

Senator HULL. Mr. Mills, in the operation of the present law I notice about sixty-odd rates and classifications involving many hundred millions of imports wherein the rates range invariably from 100 up to as high as 736 per cent. Do you not think that somebody somewhere along the line could have rendered some better service in connection with the levying of those rates?

Mr. MILLS. Well, Senator, we have a House of Representatives and the Senate of the United States that are both supposed to protect the interests of all of the people; and, after all, they wrote the bill, and no consumers' counsel could have prevented either the Senate or the House from writing the rates which they thought advisable.

Senator HULL. You think this could have been done better?

Mr. MILLS. I do not want to express an opinion, Senator, as to the wisdom or lack of wisdom of the legislative body in passing a particular piece of legislation.

Senator HULL. You were so afraid to express your opinion on the other phase I thought perhaps I might draw your opinion on this particular one.

Mr. MILLS. I am afraid if we start to discuss the present tariff law it would take quite a while and would not serve any particularly good purpose. As I say, it seems to me that this is not a matter which calls for the advice from any of the departments or the Treasury Department. I say very frankly I have no information to impart to you gentlemen which is not already at your disposal. You know all about this particular bill. You know all the reasons that can be urged for or against every line in this bill better than I do.

Senator HARRISON. They have been stated heretofore time and again.

Mr. MILLS. I am only appearing here at all because I understood the committee wanted me to appear and, at least, I am very briefly representing the views of the department as to the international conference. All I can say to this committee is what I have said to the Ways and Means Committee. I think before you tell the President of the United States to endeavor to call a world conference on any particular question that you ought to know very definitely what it is all about and why the conference is being called and what you hope to obtain at such a conference.

Senator HULL. Mr. Mills, if the world is in a state of economic war and all of the commercial nations have every sort of trade and financial barrier between countries, and the exchanges of all choked down by rigid restrictions, and every sort of reprisal, impediment, embargo, and retaliatory act and conduct in effect, do not you think it is high time that the nations were getting together to confer about that?

Mr. MILLS. I recognize the situation that exists, Senator Hull, and do think something ought to be done about it, but I do think that the legislative body in telling the President of the United States to call a tariff conference when all the tariff legislation must initiate in the House of Representatives and receive the approval of the Senate before it becomes law, should, in urging the President to call that conference, lay down the policy which the United States is prepared to follow and suggest to other nations. If the purpose of this resolution is to indicate indirectly that we think our tariff is too high, then I say very frankly, as I said to the Ways and Means Committee, if

you think our tariff is too high, your job is to bring in a bill right now reducing rates that you think are too high and not suggest that the President call a conference to discuss with other nations the tariff rates of the United States, as to which you are anyhow to express yourself.

Senator HULL. Mr. Mills, if we took the initiative in this country as the most powerful factor in world economic affairs in this wild movement over the past 10 years to raise tariffs and trade barriers to mountain heights, and other countries even in self-defense or under our influence followed that course, is it not incumbent upon us to take the initiative in undertaking to promote concerted action, not individual action entirely by one country of itself, but concerted action as much as possible so far as developing a spirit that will overcome these difficulties? Would not that devolve upon this country after its course and after what has occurred in the light of its leadership?

Mr. MILLS. In the case of this country what is the objection to the only branch of the Government that really has any authority in the matter laying down beforehand what the policy of the United States is to be? If this bill means that we, the Government of the United States, are willing to reduce our tariffs if other nations reduce theirs, then you ought to say so. In this first draft, Senator Hull, that is exactly what it did say, because there was a fourth section which went on to instruct the President, after the holding of the international conference, to negotiate reciprocity treaties with various nations. In other words, there was a very definite thought behind the bill as originally introduced, and that was we should hold an international conference and that as a result of that conference certain conclusions as to tariff rates should be reached, and on the basis of those conclusions the President of the Nation was instructed to negotiate treaties of reciprocity. But as it is now, you are asking the President of the United States to call a conference but you are not telling him where the Congress of the United States stands on this great question. I do not say that you have to alter this tariff bill from top to bottom or rewrite it, but if you think it is too high and you want a conference called, then I think you ought to say to the world, "We are willing to reduce our tariff if you will reduce yours." If that is the purpose of this bill, I think you ought to say so. If it is not the purpose of this bill, I can see no good purpose to be served either as far as the United States or the world is concerned, to have the President call a conference without any policy going into that.

Senator HULL. Mr. Mills, if you will pardon me, sir. I do not want to interrupt you too much.

Mr. MILLS. No; I have said all I wanted to say to the Senator, and too much probably.

Senator HULL. Does not this proposal specifically define the policy of Congress to the extent of suggesting an international conference to promote a spirit, not only of reduction but also of dealing with other economic barriers and with important discriminations that are choking international commerce?

Mr. MILLS. Let me say just one thing. The reason the world is so disappointed in these international conferences is that they are all long on spirit and very short on accomplishments.

Senator HULL. Well, our Government did go along removing tariff formalities without asking Congress for its advice.

Mr. MILLS. It was very limited; and, as a matter of fact, the convention at which we sat merely agreed to carry out what was already the existing practice in the United States and there was no embarrassment there at all.

Senator HULL. I think our Government did make reservations that practically eliminated our Government from the debate, although we participated in the conference.

The CHAIRMAN. I do not think the fact that the tariff rates in foreign countries have been increased is a retaliatory measure in relation to the tariff we imposed. I knew the Senator would say it, and that is all I wanted to say.

Senator HULL. I did not say it.

Senator GEORGE. Assuming that should be the opinion, that tariffs were badly adjusted, not here but throughout the world, and that maladjustment of tariffs was entering into and affecting adversely the general trade conditions of the world, and therefore the general prosperity of the world, how would we proceed except by asking the President to invite a conference? I grant you that if we do not know exactly where we are going and if we have not some definite objective and some definite line of policy laid down, it is more or less hazardous to invite an international conference on anything. There is no doubt about that, but how would we proceed if that were not the thought, for instance, of Congress?

Mr. MILLS. I am questioning the wisdom of having an international conference, but I do say that to have an international conference at the request of the Congress of the United States without the Congress of the United States informing the executive branch of the Government as to what policy it has in mind is more or less in the nature of a gesture, and I can not foresee any useful result; and the more international conferences you hold resulting in nothing but a lot of trouble one way or another, the more disappointed the world is and the greater the lack of cooperation.

Senator GEORGE. I think you are entirely right about that. I am asking, not in the spirit of controversy at all, is there any desirable way or any advisable way, or any way of approach, if we should be of the opinion that tariffs were maladjusted throughout the world?

Mr. MILLS. I think we would have to make up our minds, in the first instance, as to whether our own tariff was too high or too low. I think that is the first step, because as soon as an American representative goes abroad and says to country A, B, or C, "Your tariffs are so high that they impede international trade and are harmful to the whole economic situation of the world," the representative of A, B, C, or D would say, "That is our opinion as to your tariff. Now, what are you prepared to do to your tariff?"

"Oh, I am very sorry. That depends on the Congress of the United States, and the Congress of the United States has given me no indication as to what it is going to do with reference to our tariff." Therefore our representatives have to sit around the table and offer good advice to other nations, but are not in a position to say as to what our country is going to do.

Senator GEORGE. If we ask a conference on that subject, we certainly would be in a very delicate position if we were not prepared to give and take.

Mr. MILLS. Then I think you ought to say so.

Senator WALSH of Massachusetts. How can you say the tariffs are too high or too low when the rates depend upon the facts in the particular cases and they differ with different products? I do not see that Congress can define the policy saying we want lower or higher tariff rates. Every case is different. Every country is different. Some countries produce one commodity that we can buy from them to our advantage, and other countries do not produce that same commodity. It seems to me we have got to deal with the thing in a very general way first.

Mr. MILLS. Senator Walsh, you are pointing out some of the difficulties which would concern us.

Senator WALSH of Massachusetts. But you are asking us to declare that our tariff rates are too high and Congress would have to say to the President, "Call a conference. We say they are too high." You can not do that. You can not say, "Our rates are too high," or "Our rates are too low." There are some differences, some problems that are impeding freight. There is something going on, some barriers between these duties that stop progress industrially throughout the world, and how can we sit down and talk it over and say "we are too high" or "too low" and "you are too high" or "you are too low" to them?

Mr. MILLS. You never can discuss individual tariff rates at an international conference, but you are suggesting this as a formula. It occurs to me you might say very definitely to the American representatives that the policy of the United States is to insist on tariff rates high enough to equalize the cost of production here and abroad. That is the broad principle on which we propose to continue to make our tariff. There are any number of nations that do not construct their tariffs on that principle. If you want to send representatives abroad to say that is the position of the United States and we propose to stand on it, why, you have got something definite to go on; but as the last paragraph is now drafted, to me it just represents a pious aspiration and I can not see that it is going to be of any practical benefit to the world, because if you lead these nations to believe—and you know as well as I do that there has been a great propaganda against the tariff of the United States—if you lead these nations to believe that this is a change of heart on the part of the United States, we are going to call a tariff conference and we are going to deal with our own tariff in the first instance, and then we go over there and say, "We never came over here to discuss our own tariff. We have no instructions as to our own tariff," you do the same old thing that has been done repeatedly; you raise the hopes of the world and then you let them down.

Senator HULL. Mr. Mills, is it your position that the President's views entirely meet this tariff and trade situation when he says that the tariff commission can take care of the matter entirely?

Mr. MILLS. I do not think I have any authority to speak for the President. I never discussed this particular measure with him.

Senator HULL. Can you speak for yourself as to whether the activities of the present Tariff Commission, as the President says, are sufficient to take care of this tariff situation as it relates to our international trade and other economic interests?

Mr. MILLS. I have not had occasion to study the whole question either from the standpoint of the merits or from the standpoint of

administration and put myself in a position to express an opinion that would be worth anything, Senator.

Senator HULL. I thought the implication of all you were saying here was straight in that direction; that was why I was trying to see if you would not sum up.

Mr. MILLS. No; the only point I wanted to make was that if we were to have an international conference let us agree beforehand as to what the policy of the United States is to be, and not have the representatives of the United States take one position, come back home, and then have the Congress of the United States say, "That does not represent our views at all."

Senator HULL. Do you not think, Mr. Mills, that if representatives of each of the important nations should come together and call attention of all the countries of any importance to the fact that they could liberalize these exchange restrictions that are choking them down to the knees and that they should remove some of these terrific obstructions which prevent even dozens of nations from making the most ordinary international transactions and call for some orderly procedure, to unshackle world credit and exchange and trade to some extent, do you not think that would restore confidence here and everywhere just ten times as quickly as ten of these so-called reconstruction finance corporations and other temporary emergency domestic agencies that we are undertaking to create in order to meet this situation here?

Mr. MILLS. I think that international solidarity to solve some of these world problems would be effective just to the extent that something was done. But, after all, three years ago a conference was held at Geneva, attended by some of the ablest men representing many countries of the world. They adopted a series of resolutions pretty much along the lines you have been discussing. Those resolutions were all referred back to their governments, and from that day to this every government in Europe has continued to do just the opposite, and that is, raised its tariff barriers until we finally come to Great Britain, the last citizendom of free trade, and they go on a protective basis. Only in the course of the last three years there was a great international conference which warned against the very perils which you have in mind. Those are international conferences that in my judgment do nothing. The time has come for an international conference as a result of which governments will actually act.

Senator HULL. After this country and the world have been floundering through more than two years of unprecedented panic conditions which have left in their wake millions of bankruptcies and tens of thousands of suicides, do you not think an international conference has learned something since that one met?

Mr. MILLS. If the people who passed the resolution should show their good faith by saying, "We are ready to deal with our own tariff."

Senator HULL. Do you not think the administration of this National Government ought to take some of the leadership?

Mr. MILLS. As a matter of fact, Senator, you and I probably would not agree on the question of what is a proper tariff rate. I class myself very definitely in the protectionist class, but if I were urging a world tariff conference and as a result wanted something to come out of it and I believed that the last American tariff bill was too

high, the most effective thing I could do to assure the success of that conference would be to declare at the start that we consider our own tariff bill too high and we are willing to reduce it if other nations will do likewise. That would be a clear act of good faith that might assure the success of the conference, but unless we are willing to say what we are willing to do at the start, how can we expect other nations to do anything more than to draft a series of sound economic measures?

The CHAIRMAN. What would be the effect of an international conference except to reduce our rates? Is it conceivable that all the other nations of the world under present conditions would come together and ask us to raise our rates?

Mr. MILLS. They would all ask us to reduce our rates.

Senator HARRISON. What would be the objection to reducing our rates on certain propositions?

The CHAIRMAN. Seventy per cent of all that comes in now comes in free.

Mr. MILLS. Senator Harrison, if that is the purpose, why not reduce them? There is all the authority in the world here.

Senator HARRISON. Will you give us assurance that the President would approve what we do?

Mr. MILLS. That is a large order.

Senator WATSON. Nobody is going to buy a pig in a bag.

Senator HARRISON. It has got to report back to the Congress before any final action is taken.

Senator CONNALLY. I have a very high regard for your opinion. You just stated if this resolution contained a declaration of that kind, that we were willing to reduce our tariffs if other nations of the world would reduce theirs, that would be getting somewhere. Would you favor this resolution if it contained that sort of a clause?

Mr. MILLS. No, sir; I would not. What I say is, if I were back of this resolution and really wanted to see something result, I think that would be an act of good faith that might give some assurance of success.

Senator CONNALLY. You recited the fact that this other international conference had failed, and you admit that conditions do call for some sort of international action. Because the other one failed, is that any reason why we should not endeavor and keep on endeavoring to do something to help pull the world out of the hole?

Mr. MILLS. No, Senator; it is all a question of give and take, and you can not go and ask other nations to reduce their tariffs unless you are actually prepared to do something about your own.

Senator CONNALLY. As a protectionist, if you thought that by reducing our tariffs some we could bring about reductions on the other countries and could thereby stimulate world trade and open up some of the channels that are now clogged, would not you favor it?

Mr. MILLS. This is as far as I would be willing to go; I am no longer speaking for the Treasury but I am expressing my own personal view—

Senator CONNALLY. I would rather have your view than that of the Treasury.

Mr. MILLS. Some of these tariffs are based on no principle whatsoever except the desire to exclude as far as possible all foreign goods. It seems to me that if the United States could get some of these coun-

tries at least to base their tariffs on some definite principle such as the difference between cost of production at home and abroad, we would accomplish something and there would be nothing inconsistent in that policy with what has been the historic policy of the United States.

Senator CONNALLY. Is there any other way to get them to do that except by conferring in diplomatic channels through the agency of the President by calling a conference?

Mr. MILLS. No; but, then, I think you ought to tell the President what you have in mind. I am not objecting to your conference. I am not objecting to the resolution. I am objecting to the futility of it unless the Congress of the United States lays down the policy which it expects the President to follow; because, after all, it is the Congress that must initiate tariff legislation.

Senator HARRISON. It expressly provides for the lowering of excessive tariff rates. Is not that pretty instructive?

Mr. MILLS. Whatever it may mean, Senator. Whose tariff rates? That is the real question.

The CHAIRMAN. From what section of the country?

Senator CONNALLY. Everybody's so far as I am concerned.

The CHAIRMAN. I do not know about that. You are not in favor of figs being reduced?

Senator CONNALLY. Yes, I am. If you reduce other things, I challenge that statement of the chairman. I am for reducing all of them, I do not care where they come from.

The CHAIRMAN. I mean when the bill was before the Senate.

Senator CONNALLY. I voted for figs because the gentleman from Utah and his cohorts put duties on everything else. If we are going to have duties on the great bulk of commodities, I want them from my section; not simply just have them on sugar and then quit.

The CHAIRMAN. I have no objections to it, as I told the Senator.

Senator CONNALLY. I am willing to reduce them on all of them if it will bring about this policy—figs and sugar too.

Senator HARRISON. Is there anything else you want to ask? Are you through now?

Mr. MILLS. Yes.

The CHAIRMAN. I just received a word from Mr. Aldrich, of the Chase National Bank, that representatives of that institution who wanted to be here to testify on the Johnson resolution, upon request of Senator King, were out of the city and would not appear until Wednesday morning. I therefore suggest we meet Monday morning and continue the hearings on this bill.

Senator HARRISON. Let us not reiterate and prolong the consideration of the proposition. Is there any other request to be heard on this proposition?

The CHAIRMAN. There is Mr. Dennison, of the United States Chamber of Commerce.

Senator HARRISON. I say quite frankly to the Senator, it will be just a reiteration.

The CLERK. He just wants to file a brief.

The CHAIRMAN. Is he here?

The CLERK. He said he would be here, but he is not.

The CHAIRMAN. We can take this up Monday morning.

Senator HARRISON. There is no reason in inviting a lot of people who do not care about coming. Mr. Mills said that he did not know why he was here. He was asked to come. If we are just going to prolong the proposition by requesting a lot of people to come here, then there might be a motion made on the floor of the Senate to discharge the committee and take this thing up for consideration.

The CHAIRMAN. The Senate can do that if it wants to.

Senator HARRISON. It does not want to do it, but let us proceed along very quickly.

The CHAIRMAN. On account of the impossibility of the witnesses from New York on the Johnson resolution coming here Monday, that Johnson resolution will go over until Wednesday morning, when they can be here.

Senator GEORGE. If there are some other witnesses present now, why should not we hear them?

The CLERK. There is another witness, Mr. Dennison, a representative of the United States Chamber of Commerce. He just wanted to file a brief.

(Letter received from the president of the United States Chamber of Commrce:)

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, January 25, 1932.

HON. REED SMOOT,

Chairman Committee on Finance, United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN. In connection with your committee's consideration of H. R. 6662 to amend the tariff act of 1930, may I bring to your attention the views of the membership of the Chamber of Commerce of the United States with respect to the flexible provisions of the tariff law (sec. 336).

In 1921 the Chamber of Commerce of the United States, through referendum of the chambers of commerce and trade associations in its membership, voted that "legislation should be enacted permitting in the event of changes of economic factors adjustment of tariff rates by administrative authorities within limits prescribed by Congress for the purpose of maintaining a consistent tariff policy."

Before the enactment of the present law the membership of the Chamber of Commerce of the United States in annual meeting in May, 1929, reaffirmed unanimously its position regarding the flexible provisions of our tariff law in the following words: "In the determination of a fair and just protective tariff schedule accurately reflecting these considerations and flexible enough to meet changing economic conditions, administrative authority is required to act promptly after investigation and within legislative limits." The membership of the chamber also expressed the desire that the "Tariff Commission should be strengthened by the necessary authority for expeditious determination of these questions with full responsibility under the President of the United States."

Considerable improvement has been made in the expeditious handling of tariff investigations since June 18, 1930, when the new tariff act became effective; this the Chamber of Commerce of the United States has noted with satisfaction. In view of the fact that changes throughout the world are constantly taking place in the costs of raw materials, wages, costs of transportation, and other economic factors, the national chamber strongly urges that the principle of the flexible tariff, utilizing the investigatory functions of the Tariff Commission with proclamations of changes in rates of duty by the President, should be continued.

I am glad to have the opportunity of placing before the Finance Committee of the Senate the collective opinion of the Chamber of Commerce of the United States, and request that this statement be made a part of your official record of the hearings on the tariff bill under consideration.

Very truly yours,

SILAS H. STRAWN, *President.*

The CHAIRMAN. We will resume the hearing on Monday morning (Whereupon, at 12.18 o'clock p. m., an adjournment was taken until Monday, January 25, 1932, at 10 o'clock a. m.)

AMENDING TARIFF ACT OF 1930

MONDAY, JANUARY 25, 1932

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

The committee met at 10 o'clock a. m. in the hearing room of the Committee on Finance, Senate Office Building, Monday, January 25, 1932, Senator Reed Smoot (chairman) presiding.

Present: Senators Smoot (chairman), Watson, Couzens, Bingham, Jones, Metcalf, Harrison, King, George, Barkley, Gore, and Costigan.

The CHAIRMAN. The committee will come to order. Mr. Emery, at the close of the last session I think it was understood that you had some further remarks to make, and we would be glad to hear them at this time.

STATEMENT OF JAMES A. EMERY, COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS—Resumed

Mr. EMERY. Senators, with your indulgence I wanted to answer several questions that were asked me by several members of the committee or providing information upon which the answer could be predicated.

First, I was asked as to the status of the work of the Tariff Commission with regard to their investigations and the cases submitted up to date. The chairman of the committee answered that in part. I only venture to provide this further information as a summary to December 22, 1931, the last official statement that I have had access to, and that shows a total of the projects before the commission during its life 149, and of those related to section 336, the investigations completed and reported to the President under section 336, were 39. And of these investigations the articles upon which rates of duty were increased were 12 in number; the articles upon which rates of duty were reduced were 17. The remainder made no change in the law.

Then the further question was asked by another member of the committee as to the unanimity of commission reports—what the experience of the commission had been in that regard. From the time the commission came into existence, that is, with the power to operate under the flexible provisions in 1922 to March, 1929, for which there is an opportunity to compile data from the examination of reports 165 reports were made by the commission, of which 147 were unanimous and 18 presented dissents. That would be an average of a little more than two dissents in a year during seven years of operation. And I venture to say that that would compare more than favorably with the record of any of the courts on mixed questions of fact and law.

Because of two questions raised in the course of inquiries which, under the questions of the committee I could not complete an answer

to, I wanted to call the committee's attention to those two questions, that looked to the administration of the law.

In one the suggestion was made that it was impracticable to ascertain costs of production. If one means by that, that that must be ascertained with scientific or mathematical accuracy it is fairly true with respect to foreign commodities. If that is said with respect to domestic costs of production I should say that with the authority that the commission possesses it can obtain information as accurately as that obtained by any producer himself. So whatever defects there would be in the information would be the defects inevitably accompanying the frailties of the human mind. But they would not be practical difficulties.

I call that particularly to the attention of the committee because that difficulty has been met again and again, and one of the arguments made in the Supreme Court of the United States when the constitutionality of the present flexible tariff was before the court—the argument made by counsel was that it was impossible to operate under the formula of the law. That it was unintelligible to begin with, and that it would require a conclusion that was not operative. To which the court replied that it may be that it is difficult to fix with exactness those differences—referring to foreign and domestic costs—but the difference which is sought in the statute is perfectly clear and perfectly intelligible. That was in the case of *Hampton v. United States* (276 U. S., 393).

Then, many years before, the authority delegated to the Secretary of the Treasury to ascertain the conversion value of foreign currency was attacked as an abuse of legislative power and said to be an impossible thing to arrive at scientifically. And much economic testimony was given in that regard, to which the court then replied: "The Government gets the truth as near as it can and proclaims it." And that is the way human government operates. That is the case of *Kramer v. Arthur* in 102 U. S. at 617.

Now, in view of the doubt that seems to lie in the minds of members of the committee with regard to, first, the power to exercise the administrative authority conferred, I would like to just briefly call the committee's attention to three classes of cases which operate over the entire history of the United States from the organization of the Government to the passage of the first tariff act, which was the second statute passed by the First Congress, through the period of the administration of the tariff law in which the very questions that are here presented had to arise again and again, and to come again and again before the courts of the United States. Not to take your time unduly, I just want to allude briefly to those three classes of cases.

First, as to the character of the power given to the President. It is the power to tax, it is the power to suspend the operation of the law, it is the power to put the law into effect or to make it ineffective.

By the act of June 4, 1794, President Washington was empowered to place an embargo on all shipping in any port of the United States whenever in his opinion the public safety required it. And the power was repeatedly exercised by the first President of the United States, and is about as broad an expression of Executive discretion as Congress ever conferred upon any man.

Secondly, by the nonintercourse acts of 1798 and 1799 President Adams was directed to suspend the restraints and prohibitions

controlling all commercial intercourse with France if he deemed it expedient and consistent with the interests of the United States, and to revoke such order whenever in his opinion the interest of the United States shall require it. Thus all the commercial relations between France and the young Republic were placed in the discretionary control of the second President of the United States.

The CHAIRMAN. What year was that?

Mr. EMERY. 1797-98.

Then, by the nonimportation act of 1806, the entry of a whole group of commodities from Great Britain and from her colonies was forbidden, but the operation of this prohibition was postponed until July 1, 1907. The President was authorized then to suspend it still further if in his judgment the public interest required it. And this broad grant of discretionary authority was approved by and administered by President Thomas Jefferson.

Thus the first three Presidents of the United States were granted a discretionary authority to halt commerce, to suspend and make effective the operation of duties, and to modify within the Executive discretion granted by Congress the rule which Congress itself in order to effectively protect the threatened commerce of the young nation had granted to these Presidents.

The CHAIRMAN. Do you think that our Constitution has been amended in such a way that it would influence a decision contrary to the decisions of the courts in years past?

Mr. EMERY. No. First I call this to your attention because the contemporary construction of the Constitution by the living men who had participated in its formulation and adoption presents, of course, the most powerful form of argument as to the traditional viewpoint of the makers of the government that we have.

Senator WATSON. Has any question been raised by any member of the committee as to the right of Congress to confer this authority on the President? I thought the question was as to the wisdom of the policy.

Senator HARRISON. This is the question of the policy of the Congress.

Senator WATSON. I say it is not a question of the right of Congress to do it. It is a question of policy of the Congress.

Senator GEORGE. Senator Watson, I do not think that the Congress would have the power to confer upon the Tariff Commission the power to take articles from the dutiable list and put them on the free list or from the free list on the dutiable list.

Senator WATSON. You think that is unconstitutional?

Senator GEORGE. Yes.

Senator WATSON. As a delegation of authority not warranted by the Constitution?

Senator GEORGE. Yes.

Senator WATSON. In other words, conferring upon them rate-making power?

Senator GEORGE. I think so.

Senator WATSON. On the theory, of course, that the tariff bill, so called, is not a protection bill or a free trade bill; it is really a revenue proposition, to create revenue.

Senator GEORGE. Yes.

Senator WATSON. Which must rest in Congress.

Senator GEORGE. Yes. I think that is clearly a legislative power, and is one that is not reducible to a formula and there is no attempt in this country to reduce it to a formula.

Mr. EMERY. In that regard I venture to call the distinguished Senator's attention to the fact that the power to levy a tax on an import represents two powers. One is the power to raise revenue for public purposes. The other is the power to regulate foreign commerce. And the levy of import duties is very frequently and consistently exercised by Congress as a regulation of foreign commerce. In fact if you take the present law under which you operate you will see that sections 337 and 338 are very evident uses of the power to levy a duty for the purpose of regulating where the purpose is primarily to regulate foreign commerce, and to govern the unfair methods of competition by foreign nations and discrimination by foreign nations. And through the entire history of our tariff law I think you will find always that the levy of the import duty is shot through with provisions which apply directly or are intended to apply as regulations of foreign commerce.

Thus as a typical example you will find immediately after the Civil War that Congress levied upon all goods originating or produced or grown east of the Cape of Good Hope a different duty—10 per cent ad valorem duty additional was assessed upon all similar goods produced east of the Cape of Good Hope but exported from countries west of the Cape of Good Hope. Here was an exercise of the power to levy an import duty upon imported goods. And the subject matter of the case which came to the Supreme Court of the United States was Chinese tea exported from England, although produced in China. The court sustained the power as a regulation of foreign commerce the purpose of which was to as far as possible stimulate the shipment of oriental goods in American bottoms directly from the countries involved. And as such it was sustained. I call those cases to your attention because they go to this second proposition.

Now I wanted to call your attention to the further proposition that it is not merely to the President or the Tariff Commission but to other executive officers that you delegate authority to ascertain facts or a state of things upon which the rule that you have written becomes effective, and frequently that rule that you have written, when the facts are ascertained, results in the levy of an import duty the exact terms of which are determined by the executive officer who exercises the discretion you called upon him to exercise.

A typical example of that is found in the emergency tariff act of 1921. And of course it is not new there. It is an old authority. There you have instructed the Secretary of the Treasury to ascertain whether any foreign country gives any bounty, premium, subsidy, or other advantage to a competing importer with respect to a similar article produced and sold in the domestic market by a citizen of the United States.

Now, whenever the Secretary of the Treasury examines that advantage or that bounty or that subsidy or that grant made by a foreign country with respect to that article he must determine what the advantage means in terms of duty. You have told him to do that. And you have laid down a formula for him. But he ascertains the facts. And then he exercises his discretion and his judgment to de-

termine the value of that advantage and assess it as a duty. You have instructed him to do it, and he has done it steadily. No one has ever questioned but that that was a proper exercise of discretion.

In other words, I want to call your attention to the fact that this is the proposition involved, and I think it is fundamental, and has been ever since the beginning of our Government, and has been repeatedly passed upon by the Supreme Court of the United States, and that is that the Congress can not delegate the power to make a law, but it can make a law to delegate the power to ascertain some set of facts or some condition of things upon which the law which Congress has passed becomes effective. So that there can be discretion in the execution of the law. But no discretion in the making of the law by any executive body. That is the discretion.

Senator GEORGE. I do not think there would be any controversy about that, Mr. Emery. But I am speaking here with distinct and specific reference to this provision, speaking now of the Tariff Commission, "Any such increased or decreased duty may include the transfer of the article from the dutiable list to the free list * * *." That would include the power to reverse the congressional action. Now then that report is to be made to the Congress, and if not acted upon within 60 days it becomes law. I think it is clearly beyond the power of the Congress to delegate any such authority as that to the Tariff Commission.

Mr. EMERY. Would you question, Senator, the power of Congress to say to the President, "Whenever you shall find a certain state of facts which we deem necessary to the execution of the policy to be the facts in this case, we direct that a duty be levied upon an article upon which no duty is now levied"?

Senator GEORGE. No; if we fixed the amount of the duty.

Mr. EMERY. That is the case of *Field v. Clark* (143 U. S.).

Senator GEORGE. Yes. If we fixed the amount of duty.

Mr. EMERY. Yes. Now the only difference there is that the commission is operating, as I see it, under a formula which you have defined. It is your formula, and it makes the execution of your will—that is, of your policy—dependent upon a certain condition of fact. That condition of fact is merely ascertained by some one else whom you appoint as your agent, and then the law goes into operation.

Now, since 1818, for example, which was the first tariff act, you have fact finding by customs officers as the basis of the operation of the law. They had to find the facts upon which the policy laid down by Congress under the statute became effective. They had, for example, to find out, for the purpose of appraising imported goods—they had to find out and estimate what the foreign market value of imported goods was. There was no procedure provided. The appraisers were required at various times to determine foreign market values, and they had to determine those and then work out a formula practically under discretion which you reposed in them for the purpose of getting the law executed. And the distinction has always been the distinction found in the execution of the law by your command and the determination of the standard as to what shall be the law. And that is the fundamental thing that runs through here, whether it is a tariff commission or a customs officer or an executive officer of any kind.

Why, you have even gone so far, in the case of *Grimaud v. U. S.* (220 U. S.), where you said to the Secretary of the Interior, "You write a regulation to control grazing on the public park. In other words, our objective is to control grazing on the public park. You write the regulation." He did. And that regulation sounded in fine and imprisonment so that man who violated it went to jail and paid a fine. And when the man violated a regulation which the Secretary wrote at your instance and was indicted by a grand jury he pleaded this very case. He said, "Why, Congress alone can pass a law making an act criminal. No executive officer can do that." To which the court replied, "Congress can determine the purpose which it wishes executed and lay down the standard, and it can then delegate to an executive officer filling in the details," as the Supreme Court said. And they filled in the details and they put this man in jail.

That has been the rule steadily developed without one single contradictory instance in the entire history of the tariff administration of the United States.

I just wanted to call the committee's attention to the development of the law.

Senator WATSON. I understood there was no question about the authority.

Mr. EMERY. I understood there was.

Senator WATSON. Unless to transfer an article from the free list to the dutiable list. The general rule I think is all summed up in this case which I remember reading some time ago, and which one of the boys handed to me just now.

The CHAIRMAN. Under the law you can not take a rate that is on the free list and transfer it to the dutiable list.

Senator WATSON. My question is whether or not Congress can delegate authority to the commission to do that, or confer the authority upon the President to do that with the advice of the commission. Of course here is the rule:

The Congress may not delegate its purely legislative power to a commission—

Mr. EMERY. Surely.

Senator WATSON. Everybody understands that.

The CHAIRMAN. Yes.

Senator WATSON (continuing reading):

but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress.

That is all right. But here is come to this, and I was wondering about this, Senator Harrison. Here is an act passed by Congress; and this is fundamental. I am glad Senator George is coming back. [Continuing reading:]

That with a view to secure reciprocal trade with countries producing the following articles—

Naming various articles, sugar, molasses, and various others, if the President finds that another country is imposing duties upon certain articles he can then place those articles on the protected list himself. Now that is sustained here by the court in a very vigorous decision.

Mr. EMERY. What case is that, Senator?

Senator WATSON. *Hampton & Co. v. United States* (276, U. S. 394).

Mr. EMERY. Yes.

Senator WATSON (continuing reading):

After an examination of all the authorities, the court said that while Congress could not delegate legislative power to the President, this act did not in any real sense invest the President with the power of legislation, because nothing involving the expediency or just operation of such legislation was left to the determination of the President; that the legislative power was exercised when Congress declared that the suspension should take effect upon a named contingency. What the President was required to do was merely in execution of the act of Congress. It was not the making of law. He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect.

I was wondering if in the case of a reciprocity treaty of that kind a president is empowered to take a number of articles and place them either on the free list or the protected list, a delegation to him by the Congress of that authority, whether or not that would imply that we might similarly confer upon the President the right to put an article on the free list or put it on the protected list?

Senator GEORGE. I do not think so, Senator, for the reason that when you make a reciprocity treaty and declare the general public policy that with respect to articles coming from a particular country to us the same reciprocal right should obtain, that then you leave to the President the mere duty and responsibility of finding and ascertaining that fact.

But take this case. Supposing your Tariff Commission decided that a 2-cent duty on sugar was all wrong for any reason, and it said, "We will take the 2-cent duty off of sugar. We will put it on the free list, and we will make our report to Congress, but if the Congress does not act within 60 days our decision shall become the law." Manifestly the determination of whether sugar should be taken from the dutiable and put on the free list under the circumstances set out here, there being no question of reciprocity and no policy of reciprocity previously fixed and determined by the Congress, would be a legislative act. And it seems to me it would be clearly unconstitutional for the reason it would be an unlawful delegation. Second, because it would deny the President himself the exercise of his legislative power which is involved in his right to veto or to approve legislation.

Senator WATSON. I hope that what you say is true, Senator, because I do not like to see the commission invested with any such authority.

Senator GEORGE. Yes. But wholly aside from it I think the question of policy is much more fundamental than the question of strict legal power.

Senator WATSON. Yes; I do too.

Senator GEORGE. I think it would be dangerous in the extreme to ever reach the decision that we would leave to any particular body the power to determine whether something should be taxed or should be subjected to a duty or should go on the free list. And I repeat what I have said. It is impossible to tell what change of sentiment may come and what may be the view of an elective officer in the future. It is easily conceivable, to my mind at least, that if you had a President and had a tariff commission that were disposed to think that everything should be taken off the dutiable list and put on the free list, that

you certainly would have a chaotic condition to follow that sort of decision.

Senator WATSON. Certainly.

The CHAIRMAN. Well, would you not have under your proposition here a chaotic condition if the reverse was put into operation? For instance, the taking from the free list and putting upon the dutiable list. You are speaking of sugar, or any other commodity; I do not care what it is.

Senator GEORGE. I am speaking of policy now, of course.

Senator WATSON. Yes.

The CHAIRMAN. I am speaking now of the same policy. You take an article from the free list; what you are undertaking to do here. You take the oil that is before us right now; take that and put it on the protected list. How are you going to compensate the industries that the oil goes into and the rates based upon free oil?

Senator WATSON. Compensatory duties.

The CHAIRMAN. A compensatory duty. Now the same with sugar or any other article. The rates on chocolate, the rates upon everything that sugar goes into on the protected list, were based upon the rate that was imposed upon sugar.

Senator GEORGE. I think you are right.

The CHAIRMAN. If you put it on the free list, then all of the industries in which sugar enters are immediately overprotected. How are you going to handle those items? And there are hundreds of them.

Senator GEORGE. I think that is true.

Senator HARRISON. Well, the question comes back to Congress under this bill.

Senator GEORGE. It comes back to Congress, Senator, but it becomes effective, under this provision, in 60 days.

The CHAIRMAN. It would be open all the time. There would be no end to the tariff legislation.

Senator HARRISON. I think the view of this side of the table at least is that the 60-day provision should be taken out.

Senator WATSON. You would leave it how, Senator?

Senator HARRISON. Leave it to Congress.

The CHAIRMAN. Then we would have the tariff question before Congress all the time.

Senator HARRISON. Well, that is an argument, of course.

Senator GEORGE. That is one of the questions. Suppose we get through with Mr. Emery, because we are detaining him.

Mr. EMERY. I am taking your time, Senator. I am sorry. I turn aside from the question of power, because it is a fundamental question. You can not, necessarily, discuss a question of policy until you agree on the question of power.

Senator HARRISON. Evidently there was a question in Congress when this flexible tariff was written, because they did not allow the commission to take from the free list and put on the dutiable list, or vice versa. So there was some question as to the power of Congress to do it.

Mr. EMERY. With your kind indulgence, Mr. Chairman, I want to say just one word on this question of power, and then I want to call the committee's attention to the matter of policy. And I only say this because I think that possibly in the course of discretion like this

we stress too much the power that is exercised by one particular body.

What I have undertaken to present to your committee was the limit of executive power, it does not make any difference by whom it is exercised, because you are the gentlemen that select the executive agent. You can take it away from him whenever you please, and he can not exercise any power except as you delegate it to him. You alone are the determinant of that, and you have chosen every kind of executive agent, and of course as practical men you know it is impossible to administer the affairs of the Government if you do not exercise discretion in the matter. But I want to call this one final test to your attention.

You say that the test of the executive as distinguished from legislative authority in this regard would be the power in effect to levy a tax. And of course the test in that power as exercised is whether it results in a condition through which the executive officer does one of two things, levies a tax or destroys the tax. Because I submit to you gentlemen, which is the greater power, the power to modify a tax or the power to destroy it by preventing its imposition?

I say this to you in conclusion on that alone, that you have again and again granted to the President of the United States, from Washington's day to this, and you have granted it right here in the tariff act of 1930—the power to destroy the subject matter of the tax. Because under sections 337–338 you state to the President of the United States: In your discretion, whenever you believe that a foreign nation is discriminating against us, or whenever you believe an unfair method of competition is involved, first in section 337 you have said, on the suspicion that that exists, deny the article which we tax entry, and that kills the tax. So you have then granted to the President of the United States, without a word of debate on either side, of either party in the Senate and the House, the power to destroy the levy of the tax and prevent a collection. And you have also said: When you believe that this condition exists—first you could do this on suspicion, but when you satisfied yourself—that is the language—when you have satisfied yourself that an unfair method of competition is indulged in by importers or by a foreign nation, or that the United States is discriminated against in its foreign commerce, when it passes through some country or some third country as the beneficiary of the policy of the foreign country, then you have said: Mr. President, whenever you are satisfied of that you can prevent a ship from discharging its cargo, you can prevent a particular commodity from entering the ports of the United States that is now the subject of a tax, or you can declare a general embargo almost equivalent to the war-making power, that would shut out commerce in all the commodities which are the subject of this tax.

Now, that you have done without question. And all I have to say in conclusion, gentlemen, on that one question of power is that if the power to destroy the subject matter of the tax is greater than the power to modify the tax, the minor thing is involved in the major. And if the President has been given from time to time the power to destroy the subject matter of the tax it is difficult to question your constitutional authority to grant the power in the exercise of a formula which you designate to modify the subject matter of the tax.

Now, I only wanted to make that final statement as to this present condition of the law clear.

As to the question of policy, Mr. Chairman, I just want to say this one word, if I may, with your indulgence. We realize very clearly the serious questions of policy that are here involved, and we have not discussed these questions of power for the purpose of urging you to change your mind about policy because you are doubtful about power. We tried first of all to show what the limit of power was. But here is the question of policy now that is presented to you.

In response to discussion that has taken place now for 20 years the congressional mind has slowly turned toward enlarging the powers of a tariff commission for the purpose of getting facts apart from your investigating committees, because you are realizing that the economic conditions of the world under which commerce is carried on are rapidly changing, they are in a greater state of flux over a wide area than they have been in a long time. And the business of the United States, like the business of the world, and particularly its industrial business, through its management, is continually engaged in trying to ascertain the extent and nature of the effects produced by this change, the changes in prices, the changes in policy of foreign nations with which the United States is conducting business.

As you have been developing this policy you have provided and you have stated in the platforms of both parties that you recognize the importance of this machinery for investigation. And, secondly, that you were going to give the citizen of the United States a chance to at least possess himself of a limited remedy for administrative adjustment of rates in the light of ascertained economic conditions.

The issue here presented is whether you will take that away entirely from the administrative machinery you have created and return it to Congress to be exercised only by Congress, or whether, if for instance, we take the issue presented by the Vandenberg bill, you yourself make a distinction between the two questions that seem so delicately involved in your mind, and which questions are very serious matters to men like yourselves, and that is make a distinction between the taking of articles from the free list and putting them on the dutiable list, or from the dutiable list to the free list, as a matter of policy, and the modification of duties within a limited range.

As the law now stands you are engaged in an experiment to determine within what limits you can safely trust administrative adjustment. Now, we venture to urge upon you gentlemen not to destroy the limits of that experiment at present. In other words, a half a loaf is better than none. A limited measure of adjustment is better than an unlimited measure of adjustment. Don't take away the limited power of adjustment that they now have and throw off the power of adjustment on 25,000 matters of import; don't throw that back into your own busy place, because you have on your shoulders enormous tasks, quite apart from the delicate, difficult, complex, and continually recurring questions that arise in the adjustment of import duties, which are commercial questions to be developed in the light of your formula. And here you have a great mass of questions presented to you, particularly in the present condition of the United States, including the appropriation for all the departments of the Government, and the consideration of 20,000 proposals on different subjects of private and public policy.

If you must make a distinction between the power you are willing to permit with regard to the movement of articles from the dutiable to the free list, and you want to reserve that exclusively to yourselves, your judgment goes. But do not take away the power of limited adjustment, especially, gentlemen, apart from all other questions, having offered the citizen a means of relief, having encouraged him to come in to a body of your creation, having urged that body to ascertain what the facts are in order to equalize competitive conditions between people of the United States and foreign countries, having laid down the formula, urged the ascertainment of the facts, and invited the citizen to partake of this relief, then do not make it impossible to administer it by returning all these questions of fact back to you without being able to make a promise that he will receive your consideration immediately or at all, but leaving him in the position in which he was before the act of 1922, without any administrative means of providing adjustment, especially in the light of the fact that every important competing nation over the face of the earth has flexible machinery by which it can adjust its duties due to internal situations, to changes in prices and to changes in foreign policy. That leaves us in the most difficult of all positions, because we are economically disarmed and they are economically fortified with the newest and most effective of economic weapons, and under the present condition of industry in the United States it would make it difficult to survive that kind of competition.

Senator GORE. Do you suppose that this country or any other country makes tariffs with reference to actual facts and conditions? Any country in the world?

Mr. EMERY. Why, yes; I think they do, Senator.

Senator GORE. Particularly this one?

Mr. EMERY. I think so; yes.

Senator GORE. Do you not think they are made with reference to the desire of people to protect against competition, whether it is reasonable or unreasonable competition?

Mr. EMERY. No; I do not think so, Senator, and I will tell you why. Because internally within the United States to-day one of the most tremendous questions that confronts its own business men is the effect of unreasonable, drastic competition that results in loss to both competitors and serious injuries to their own capacity to carry on their business. That is quite apart from foreign competition.

Senator GORE. Do you think these high tariff increases in foreign countries have been made with reference to facts and conditions?

Mr. EMERY. I do not want to go into that whole question, but I have listened to the debates of the British Parliament with regard to the safeguarding of British industries and on the question of their imports, and those debates run much the same as they do here. That the members of Parliament were presenting from the viewpoint of their constituents the relative cost of their production with reference to foreign countries, the cost of transportation, and the difficulty of competing with another foreign country in a foreign market. And England, of course, particularly is concerned about the condition under which she reaches her colonial markets. So the discussion there ran on the question of safeguarding the industry as a matter of policy, and then the debate ran on the questions of fact as to what the condition was in the industry. I listened for a week in the British Parlia-

ment with great interest in 1927, and I thought it sounded exactly like a discussion in our own Congress on the same state of facts and policy.

The CHAIRMAN. That is all, then, with Mr. Emery.

Mr. EMERY. Thank you, sir.

The CHAIRMAN. Is Mr. Dennison in the room?

(There was no response.)

The CHAIRMAN. Mr. Dennison asked to be heard, but he is not present, so we will conclude our hearings, if you have no one you wish to be heard, Senator Harrison.

Senator HARRISON. No.

The CHAIRMAN. Then the hearings will be closed.

Senator HARRISON. Mr. Chairman, I would suggest, then, that we fix a time definitely to go into the consideration of the bill.

The CHAIRMAN. Thursday is the first morning.

Senator HARRISON. Let us fix it for Thursday morning, then.

The CHAIRMAN. We will fix it for Thursday morning at 10 o'clock. Which will be an executive session. The committee will stand adjourned.

(Thereupon, at 11.15 a. m., Monday, January 25, 1932, the hearings on H. R. 6662 were concluded.)