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SENATE

} REPORT
No. 728

CONSTRUING SECTION 503 (B) OF THE TARIFF ACT OF 1930

MAY 9 (calendar day, MAY 25), 1932.—Ordered to be printed

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

REPORT

[To accompany H. J. Res. 336]

The Committee on Finance, to whom was referred the bill (H. J. Res. 336) construing section 503 (b) of the tariff act of 1930, having considered the same, report it with the following amendments and recommend that it do pass.

On page 1, line 7, after the comma at the end of the line insert the following: "and of the concluding provision of section 489 of 'An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes,' approved September 21, 1922."

On page 1, line 9, after the letter (b) insert the following: "and the concluding provision of said section 489,".

On page 2, line 4, after the letter (b) insert the following: "and the concluding provision of said section 489,".

Following are letters addressed to Hon. Charles R. Crisp, acting chairman Ways and Means Committee, House of Representatives, and to Hon. Reed Smoot, chairman Senate Committee on Finance, by the Secretary of the Treasury.

TREASURY DEPARTMENT,
Washington, May 10, 1932.

Hon. REED SMOOT,
Chairman Senate Finance Committee, United States Senate.

DEAR MR. CHAIRMAN: House Joint Resolution 336, construing section 503 (b) of the tariff act of 1930, was passed by the House on May 7, 1932.

The Assistant Attorney General in charge of customs matters has invited my attention to the fact that the same language which is used in section 503 (b) of the tariff act of 1930 was used in the concluding provision of section 489 of the tariff act of 1922, and that there are numerous cases now pending in the United States Customs Court which arose under the act of 1922 and which would be affected by the construction placed upon the act by this resolution. He sug-

gests that the resolution be amended so as to make certain it will apply to the concluding provision of section 489 of the tariff act of 1922.

In accordance with the Assistant Attorney General's suggestion, it is requested that House Joint Resolution 336 be amended to read as follows:

"Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, that it was and is the true intent and meaning of section 503 (b) of the act entitled 'An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes', approved June 17, 1930 and of the concluding provision of section 489 of an act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes, approved September 21, 1922, that imported merchandise entered in accordance with the provisions of said section 503 (b) and the concluding provision of said section 489, shall be appraised and reappraised in the same manner as though the merchandise was not so entered; that the appraisement and reappraisement of such merchandise shall have the same force and effect as in the case of merchandise not so entered, and that entries covered by certification of the importer as provided in said section 503 (b) and the concluding provision of said section 489, shall be liquidated in accordance with the final appraised value of the merchandise covered by such certificates."

A copy of my letter to Hon. Charles R. Crisp, acting chairman of the Ways and Means Committee, requesting the passage of this legislation, was sent you on March 15, 1932, and also appears in the Congressional Record of May 7, page 10054.

I shall appreciate it if you will have this amendment made and the resolution adopted as expeditiously as practicable.

Very truly yours,

OGDEN L. MILLS,
Secretary of the Treasury.

MARCH 15, 1932.

HON. CHARLES R. CRISP,
*Acting Chairman Ways and Means Committee,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: I wish most respectfully to call your attention to a serious situation affecting the administration of the revenue laws which seems to require remedial action by the Congress.

Under the tariff administrative laws the importer is required to declare in the entry the proper value of his merchandise, under pain of having additional duties imposed if the value declared is too low. The declared value is not binding upon the Government, but, except as provided in section 503 (b) of the tariff act of 1930, and similar provisions in previous tariff acts, it is binding upon the importer. Section 503 (b) permits an importer who has an appeal to reappraisement pending to enter subsequent shipments under certificate at the value found by the appraiser in the appeal case, thereby avoiding the possibility of additional duties if the appraiser is sustained on final reappraisement and at the same time escaping the binding force of his entered value if the importer's contention in the appeal case is sustained.

In a recent decision of the United States Court of Customs and Patent Appeals, in the case of *Friedlaender Co. v. The United States* (not yet published), it was held that the appraiser must suspend appraisement of merchandise covered by entries made under certificate until the appeal in the so-called "test" case is finally decided and that any appraisement of the merchandise prior to that time is illegal and void.

The principal result of this decision will be that the packages designated for examination by the appraiser, which may amount to 10 per cent or more, can not be released until the final decision in the test case, inasmuch as section 499 of the tariff act provides that imported merchandise shall not be delivered until it has been examined and appraised.

The attention of the court was invited to the fact that a ruling such as made by it would render the statute impracticable of administration and would cause endless delay in the release of examination packages and, no doubt, would necessitate the leasing of additional storage space and the payment of storage charges by the Government. The court, however, stated that:

"It is argued here, with much vigor, that to hold duress entries in abeyance until the test cases referred to have been decided will entail upon the Government the burden of keeping in the appraisers' stores at the ports, for long periods, the

packages forwarded for examination; that frequently long periods elapse before the test case or cases are decided; that such a holding prevents the importer, for long periods, from obtaining his said examination packages.

"These are not matters which we may remedy here. The remedy, if any is needed, lies with the legislative and not with the judicial department of the Government. If delays exist in the trial of duress cases, extending into years, as detailed by affiants Thomas and Thurston, and as insisted upon by counsel for the Government, this is an unfortunate condition, and one that should enlist legislative assistance. This court, however, is concerned alone in attempting to properly construe the law which Congress has enacted, so that their provisions may be effective, if possible."

In view of all the circumstances, it is believed that the appropriate remedy is a legislative construction of section 503 (b) which will render it workable and obviate the difficulties heretofore enumerated. It is also believed that such legislative construction should take the form of a joint resolution rather than an amendment to the law. A joint resolution has, therefore, been prepared, the text of which is as follows:

"Joint Resolution construing section 503 (b) of the tariff act of 1930.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it was and is the true intent and meaning of section 503 (b) of the act entitled 'An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes', approved June 17, 1930, that imported merchandise entered in accordance with the provisions of said section 503 (b) shall be appraised and reappraised in the same manner as though the merchandise was not so entered; that the appraisement and reappraisement of such merchandise shall have the same force and effect as in the case of merchandise not so entered; and that entries covered by certification of the importer as provided in said section 503 (b) shall be liquidated in accordance with the final appraised value of the merchandise covered by such certificates."

The construction placed upon the law by this proposed resolution is in accord with the department's view as to the intent of the Congress in enacting section 503 (b) and with the practice which has been followed by it since this legislation was first adopted in the act of 1913.

In view of the importance of this matter, I suggest that, if it may be consistently done, the proposed joint resolution be given immediate consideration and be passed without delay. If you desire any further information or explanation, I shall be glad to designate an official of the department to confer with you.

A copy of this letter has been sent to the Hon. Reed Smoot, chairman Committee on Finance, United States Senate.

Very truly yours,

OGDEN L. MILLS,
Secretary of the Treasury.