CUSTOMS ADMINISTRATIVE ACT

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

THIRD SESSION

ON

H. R. 8099

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

JANUARY 25, 26, 27, AND 28, AND FEBRUARY 9, 1938

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CUSTOMS ADMINISTRATIVE ACT

TUESDAY, JANUARY 25, 1938

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
UNITED STATES SENATE,
Washington, D. C.

The subcommittee met pursuant to call, at 10:30 a. m., in the Senate Finance Committee room, Senator David I. Walsh (chairman) presiding.

Senator WALSH. The committee will come to order, please. A subcommittee of the Committee on Finance has met this morning to hear evidence on H. R. 8099, the Customs Administrative bill, a bill that passed the House of Representatives in August 1937.

This bill, H. R. 8099, I understand, is a House bill that was reported by the Ways and Means Committee after the Treasury Department had proposed and had requested the introduction of a bill which was entitled H. R. 6738, embodying the same general principles. In other words, H. R. 8099 is the House bill based upon the Treasury bill known as H. R. 6738.

Who is here representing the Treasury Department?

Mr. SPINGARN. I am here, Senator, together with Mr. Johnson, Chief Counsel of the Bureau of Customs.

Senator WALSH. Mr. Hester is unable to be here?

Mr. SPINGARN. Mr. Hester is unavoidably detained, Senator.

Senator WALSH. He made the presentation of the Treasury's position on the old bill introduced at the request of the Treasury before the House Committee on Ways and Means, is that correct?

Mr. SPINGARN. That is correct, accompanied by Mr. Johnson and myself.

Senator WALSH. Which one of you desire to take the place of Mr. Hester to represent the views of the Treasury?

Mr. SPINGARN. I was going to begin, Mr. Chairman, and Mr. Johnson, if he may, will sit by me here, and if there are any questions that I cannot answer he will attempt to do so.

STATEMENT OF STEPHEN J. SPINGARN, ATTORNEY, OFFICE OF THE GENERAL COUNSEL, TREASURY DEPARTMENT

Senator WALSH. Will you give your name to the clerk for the record, please?

Mr. SPINGARN. Stephen J. Spingarn, attorney, office of the General Counsel, Treasury Department.

Senator WALSH. How long have you been in the Treasury?

Mr. SPINGARN. About 4 years. Mr. Johnson has been in the customs service for 18 years.

Senator WALSH. And what is your name, sir?

Mr. JOHNSON. William R. Johnson.

Senator WALSH. And your position in the Treasury?

Mr. JOHNSON. Chief Counsel, Bureau of Customs.

Senator WALSH. Has the Bureau of Customs a separate counsel from the counsel in the other branches of the Treasury?

Mr. JOHNSON. I am under the jurisdiction of the General Counsel of the Treasury and chief of the legal unit in the Bureau of Customs.

Senator WALSH. Are you in the General Counsel's Office or the Customs Office?

Mr. SPINGARN. I am in the office of the General Counsel of the Treasury.

Senator WALSH. Have the other members of the committee been furnished with a brief prepared by Mr. Hester?

Mr. SPINGARN. We have copies here and will distribute them now.

Senator WALSH. Analyzing each section of the bill?

Mr. SPINGARN. Yes. We have copies of that statement with us this morning.

Senator WALSH. I think a copy of the statement prepared by Mr. Hester explanatory of H. R. 8099 should be printed in the record.

Now, I suggest you commence your explanation of this bill, Mr. Spingarn, section by section. Were there many material changes made in the original H. R. 6738, when the same subject matter was reported in H. R. 8099?

Mr. SPINGARN. There were, as you know, extensive hearings held before the House Ways and Means Committee. There were perhaps 16 or 18 amendments adopted by the Ways and Means Committee to H. R. 6738, which was ultimately reintroduced as a clean bill, H. R. 8099, which was reported out and passed the House without further amendment.

Senator WALSH. Were these amendments satisfactory to the Treasury Department?

Mr. SPINGARN. The provisions of the present bill are entirely satisfactory to the Treasury Department.

Senator WALSH. There was no discussion of the bill on the floor of the House, I understand.

Mr. SPINGARN. There was some discussion, Senator. It was passed by the House on August 19, 1937.

Senator WALSH. The closing days of the session?

Mr. SPINGARN. That is right.

Senator WALSH. But there was no detailed explanation made, if I remember rightly, in the House?

Mr. SPINGARN. I believe that there were some memoranda explaining the bill introduced in the record at that time, although the discussion was not detailed there. However, the bill was extensively explained, and discussed at the public hearings before the House Ways and Means Committee.

Senator WALSH. Begin with section 1, if you will, please.

Mr. SPINGARN. First of all I would like to make this point for the record, and that is that this bill is an administrative provision bill. It does not amend any duty rates. The Bureau of Customs of the Treasury Department is the agency charged with the administration of the customs laws. It does not regard itself as a policy-making agency in the formulation of duty rates, and the purpose of this bill is to increase the efficiency of the administration of the customs laws by that Bureau, not to amend duty rates.

Senator WALSH. There are no duty rates in this bill as it passed the House?

Mr. SPINGARN. That is correct.

Senator WALSH. Is there not one provision attempting to correct a decision of the Customs Court and in that respect it may affect the rate on a particular commodity?

Mr. SPINGARN. The provision to which I believe you have reference is the amendment to paragraph 1111 of the Tariff Act dealing with articles made of blanketing.

Senator WALSH. Yes.

Mr. SPINGARN. That provision was added by the Ways and Means Committee. It is not, we believe, a duty rate amendment. It is only designed to effect what was believed to be the original intention of the Congress with respect to that provision when it was introduced into the law.

Senator WALSH. The Ways and Means Committee declined to discuss or consider any change in duty rate. There was this one change made, and a change, or a request at least for a change in one or two other commodities where there has been a decision by the Customs Court, which the Committee felt was not in accord with the intent of Congress.

Mr. SPINGARN. The amendment which Senator Guffey and yourself are sponsoring has been referred to the Department and the report has been drafted and will be ready within a matter of a day or two.

Senator WALSH. This is another case of an interpretation that was believed by the committee was contrary to the intent of Congress.

Mr. SPINGARN. It is a case very similar to the provision you have just alluded to.

Senator WALSH. Is there any other general statement that you wish to make?

Mr. SPINGARN. Simply this: At the hearings before the Ways and Means Committee, and later on on the floor of the House, there were some statements made that this bill was an importers' bill. The Treasury wants to emphatically deny that statement. This bill is not an importers' bill, it is not a domestic manufacturers' bill, it is a bill dealing with the administrative machinery of the customs procedure. Neither the importers nor the domestic interests were consulted in connection with the preparation of the recommendations of the Treasury Department embodied in the bill, and any benefits that accrue to either one of them are purely incidental to increases in administrative efficiency.

With that prelude I will go into an analysis of the bill. If it meets with the approval of the subcommittee, inasmuch as a section-by-section explanation of the bill is being incorporated in the record, I will simply discuss the provisions that have aroused some controversy in connection with this bill. The other provisions are explained by the statement which is going into the record. This procedure would conserve the time of the subcommittee.

Senator WALSH. Very well, sir. Which is the first section that is in controversy?

Mr. SPINGARN. Section 3, which deals with the marking provisions.

Senator WALSH. Very well.

Mr. SPINGARN. This section is a revision of the law requiring imports to be marked to indicate the country of their origin. The

present amendment is designed to eliminate requirements of existing law which operate to impede the disposition of customs business. It requires each imported article or its container to be marked in a conspicuous place to inform the ultimate purchaser as to the origin of the article, eliminating the present requirement that the article and its immediate container and the outer package be marked. It provides exceptions for marking requirements where such exceptions can be justified on the basis of administrative experience. It provides that the 10 percent additional marking duty shall not apply, as it does under existing law, if goods are marked after importation but before entry into the commerce of this country. It retains the penal provisions against defacing or obliterating marking to indicate the origin of imports. The detailed changes of this important provision are as follows:

Subsection (a) eliminates the requirement of triplicate marking of imported merchandise, specifically limits marking requirements to articles of foreign origin, and authorizes the Secretary of the Treasury to prescribe the manner and method of marking articles or containers, that is, to determine the character of words, phrases, or abbreviations which shall be acceptable as indicating the country of origin and to prescribe whether the marking shall be done by printing, stamping, labeling, or other method. This subsection also authorizes the Secretary to except articles from marking requirements in closely defined circumstances. The exceptions cover those cases in which marking to indicate the country of origin is impracticable or would serve no useful purpose whatsoever, as in the case of articles which are incapable of being marked, or cannot be marked prior to the shipment to the United States without injury or except at an expense economically prohibitive of their importation, or where the country of origin can be identified by the ultimate purchaser because of the appearance or character of the articles or the circumstances of their importation, or where like articles have long been exempted under existing practice but are not susceptible of concise description. No new exceptions can be made under this provision.

Subsection (b) would require the marking of a container only in the event that the contained article is exempted from the marking. However, the usual container of certain specifically enumerated types of articles excepted from the marking requirements (such as crude substances or articles to be processed in the United States by the importer in such a manner that any mark contemplated by the section would necessarily be obliterated) are not required to be marked.

Existing law provides for an additional duty of 10 percent ad valorem on all articles when the articles or their immediate containers are not marked at the time of importation, unless the articles are exported.

Senator WALSH. What is the additional duty now?

Mr. SPINGARN. Ten percent ad valorem.

Senator WALSH. That is exactly the same?

Mr. SPINGARN. This is exactly the same, with the exception that it limits the application of the additional duty to those articles which go into channels of trade in the United States without being marked as required by law either before or after importation. In other words, at present the article has got to be exported in order to avoid the payment. Under the bill, if the goods are not marked on arrival,

in order to avoid the payment of the 10 percent extra duty this marking may be performed under customs supervision at the expense of the importer. The goods can then go into commerce without the payment of that 10 percent additional marking duty.

Senator VANDENBERG. In practical effect, how much does that suspend in the collection of this 10-percent additional duty?

Mr. SPINGARN. Mr. Johnson, would you care to make a statement on that?

Senator VANDENBERG. He can do it later.

Mr. JOHNSON. We have no readily available statistics as to the number of importations which are not properly marked, but they are of daily occurrence.

Senator WALSH. You have had a good many of these marking cases under the existing law?

Mr. SPINGARN. That is correct.

Senator WALSH. There have been some called to my attention, cases where the Department felt there was no intent to violate the spirit of the law, where all the moral rights seemed to be upon the part of the shipper, but the strict letter of the law required the additional 10 percent.

Mr. SPINGARN. Yes. A good example of that, I think, is the case of some wool imported recently from the Argentine, from certain ranches down there which had for many years not shipped wool to the United States. The wool was covered with coarse fabric which was marked merely with the names of the ranches and not with the country of origin, the Argentine. Under the existing law the importer had to pay an additional marking duty of, I believe, $12,000 because of the failure to mark this wool with the designation "Argentine."

Senator WALSH. If the marking was of a province of a country, even though he could identify where the wool or the other commodities came from, but because they did not mention the actual country they held it was a violation of the act.

Mr. SPINGARN. Yes. Subsections (d) and (e) deal, respectively, with the withholding of delivery of imported articles until properly marked and the penalties for defacing, destroying, and so forth, marks with intent to conceal the information given thereby, and make no substantive change in existing law.

That concludes the explanation of section 3.

Senator WALSH. What was the controversy over this section? Who was opposed to this liberalization of the present law?

Senator CLARK. Did anybody appear before the House committee against it?

Mr. SPINGARN. Yes; there were a number of witnesses who opposed certain of its provisions. However, there have been a number of changes made by the House.

Senator CLARK. Whom did they represent? That is what I was trying to get at.

Mr. JOHNSON. They represented both the domestic pottery industry, the domestic watch industry, and the domestic lumber producers.

Senator WALSH. They appeared against the language in the present Treasury bill?

Mr. JOHNSON. Yes.

Senator WALSH. And the language in this bill has been framed with the idea of recognizing their protests, is that right?

Mr. JOHNSON. We believe that there has been considerable improvement from their points of view.

Senator VANDENBURG. What is the National Lumber Association kicking about?

Mr. JOHNSON. The present practice of the Treasury Department of not requiring the lumber to be marked.

Senator VANDENBERG. Is that effected by this bill?

Mr. JOHNSON. If the bill is enacted in its present form, lumber would not be required to be marked.

Senator CLARK. It is not marked now?

Mr. JOHNSON. It is not marked at the present time, an it has not been during the existence of the marking law.

Senator VANDENBERG. And is that what they want, to require it to be marked?

Mr. JOHNSON. Yes; they want certain exceptions to be made inapplicable to lumber, so that lumber would hereafter be required to be marked to indicate its origin.

Senator WALSH. All lumber or certain classifications of lumber?

Mr. JOHNSON. All materials classified as lumber or timber under the tariff act, as I understand it.

Senator WALSH. Is there anything more to be said on this section? If not, we will proceed to the next controversial section.

Mr. SPINGARN. The next section I would not classify as controversial, but because there has been a good deal of interest in it, I think it worth calling to the special attention of the subcommittee. That is section 8.

Existing law authorizes the assignment of customs officers and employees to overtime duty, and the payment for such overtime by the requesting master, owner, or agent only in connection with the unlading or lading under special license of merchandise, baggage, or passengers, the entering or clearing of a vessel or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title.

Merchandise, baggage, and persons may arrive otherwise than by vessel or vehicle, as in the case of livestock driven into the country. Moreover, overtime customs services are sometimes requested for the benefit of importers or exporters in connection with the segregation or manipulation of merchandise and in various other circumstances not included in the above enumeration.

The proposed amendment of the law is therefore deemed desirable to eliminate present inequities by uniformly requiring the payment of overtime compensation for all overtime services performed on special request and for the benefit of particular importers, exporters, or carriers.

In other words, existing law specifically enumerates circumstances in which private parties can request and pay for the services of customs employees for overtime purposes, such as, for example, when a vessel comes in to a port at some time after the customhouse at that port is closed at night or on Sunday. But because it specifically enumerates the circumstances, the type of cases in which persons may request these overtime services is restricted and excludes various other types of circumstances in which the furnishing of overtime services

is believed to be desirable. This amendment will permit the furnishing of such services to, and the payment for them by, importers, exporters, and others who need overtime services of customs employees in all cases where they request such overtime services.

Senator WALSH. Do the payments move from the importer direct to the customs official or inspector?

Mr. SPINGARN. No; they clear through the Bureau, do they not, Mr. Johnson?

Mr. JOHNSON. At the present time the customs employee is paid first and the requesting importer or carrier reimburses the United States.

Senator CLARK. But the employee is paid by the United States itself?

Mr. JOHNSON. Yes.

Senator CLARK. In other words, it is not a transaction between the importer and employee?

Mr. JOHNSON. No, sir.

Senator WALSH. What do you mean by paying at the present time? Was there a different custom at some other time?

Mr. JOHNSON. In the past there was a requirement that the Government collect before it disbursed.

Senator WALSH. Very well. Proceed with the next.

Mr. SPINGARN. The next section which requires explanation is section 15 amending section 516 (b) of the Tariff Act of 1930. This section at present provides machinery whereby domestic manufacturers, producers, and wholesalers may protest the classification or rate of duty imposed on imported articles of the same class or kind as that which they manufacture, produce, or sell.

Under existing law after a protest of this character is made to the Secretary of the Treasury, the Secretary may either agree with the complainant, in which case he notifies the collectors in the various ports, and 30 days after notification the higher rate of duty—that is, the one which the complainant maintains is the proper one—goes into effect; or the Secretary may disagree with the complainant, taking the position that the rate of duty which has been imposed in the past is the correct one. In the latter event if the complainant appeals to the customs courts from the Secretary's decision, the final ascertainment of duties is suspended in connection with all entries of merchandise of the protested class which are imported or withdrawn from warehouse more than 30 days after the Secretary's adverse decision. This suspension lasts until the final decision of the customs courts, which on the average will be rendered more than a year and a half later and in some cases as much as 3½ years later.

This suspension (which may involve literally thousands of entries) acts as a virtual embargo on all imports of that particular merchandise by responsible importers because the responsible importer does not know what duties he will finally be required to pay until the final decision of the customs courts and if he continues to import that merchandise pending this decision, he risks a possible contingent liability. Existing law thus invites domestic manufacturers, producers and wholesalers competing with domestic importers to initiate proceedings which may not be well founded and which may be pursued without real hope of ultimate success in the knowledge that a barrier may be maintained against foreign competition for as long as

the proceedings may be kept alive. Thirty-two complaints have been filed with the Secretary under section 516 (b) but not one has been sustained by the courts. Section 15 amends this provision, not to deprive the domestic competitor of the privilege of appealing to the courts from a ruling of the Treasury adverse to his claim that higher duties should be imposed, but to shorten the period during which domestic importers may be subject to contingent liability. Under the revised provision, importers may import their merchandise upon payment of duties in accordance with Treasury findings until a prima facie case against the correctness of such findings is made by a judicial decision adverse to the Treasury's findings.

In this connection I might state that in 1935 a subcommittee headed by you, Senator Walsh, reported out a bill, or, rather, the Senate Finance Committee reported out a bill on the recommendation of your subcommittee, which contained this same amendment. It was in the closing days of the first session of the Seventy-fourth Congress. The reason this provision was eliminated finally from that bill was because there was another provision in the same bill dealing with the customhouse brokers in New York. There was a rather bad situation there at that time, and because this provision had certain controversial aspects, and because it was felt very desirable to get that other amendment enacted into law at once, it was eliminated at that time without prejudice to later consideration. This is now in substance the same amendment.

Senator WALSH. Within what period of time was that number of cases before the Treasury?

Mr. SPINGARN. That was under the Tariff Act of 1930. In other words, during the last 7½ years, since June 18, 1930, the date on which the 1930 Tariff Act became effective.

Senator WALSH. The next section, please?

Mr. SPINGARN. The next section is section 18. This section provides that taxes on imports shall be construed to be customs duties only if the law under which they are imposed designates them as such or provides that they shall be so treated. The purpose of this section is to overcome decisions of the customs courts holding internal-revenue taxes levied on imports under internal-revenue laws to be customs duties within the purview of exemption and preference provisions of the customs laws.

The next section is section 28.

Existing law provides that certain kinds of wool may be admitted without payment of duty under bonds conditioned upon the production within 3 years of proof that the wool so admitted has been used in the manufacture of carpets or other enumerated articles. If such proof is not so furnished, regular duties accrue and if the wool has been used in the manufacture of other articles, a penalty of 50 cents per pound also accrues.

Two principal difficulties have been encountered in the administration of this statute: (1) the practical impossibility of identifying the articles made from particular lots of imported wool so that the time limitation in certain products may be observed, and (2) the difficulty of determining whether certain products resulting from the processing of imported wool into carpets or other enumerated articles are normal wastes so that the wool represented by such products may be considered to have been used in the manufacture of the enumerated articles, in compliance with the conditions of the bond.

Section 28 (while continuing to safeguard domestic wool interests) will eliminate these difficulties from the law without prejudice to the revenue and without restriction or expansion of the tariff privileges now accorded carpet and similar wool by amendment of the statute: (1) to eliminate the present requirement that proof be furnished within a specific time as to the identified use of particular importations and to substitute in lieu thereof a system of control by bonds, penalties, and regulations, to prevent the use at any time of conditionally free importations otherwise than in the manufacture of the enumerated articles unless full duties are promptly paid; and (2) to establish with certainty the tariff status of all wools not used in making the enumerated articles, unless such wools are wastes in such condition that such use is in the usual course of manufacture commercially impracticable.

The section also authorizes the continuance of the existing administrative practice of assessing duty on noils (a type of commercially usable long staple waste) diverted from manufacture of the enumerated articles.

Senator WALSH. Is this section protested by the wool growers, or is there a controversy about this section?

Mr. SPINGARN. There has been some controversy in connection with this section, but a number of amendments have been made to it and we are hopeful that the provision will now be satisfactory to the parties concerned.

The next section I will only call attention to because it is related to the wool-felt-hat-body provision recently mentioned. This is section 29. There has been no controversy in connection with it.

Senator WALSH. This section was added by the Ways and Means Committee of the House?

Mr. SPINGARN. That is correct.

Senator WALSH. And it is the only approach to adjusting or changing, possibly by indirection, the tariff act?

Mr. SPINGARN. Yes, sir.

Senator WALSH. A restoration to what was believed to be the intent of Congress?

Mr. SPINGARN. That is correct, and a restoration to what had been the construction of the Treasury Department and other agencies of the Government concerned until the date of the court decision involved in that case.

Section 29 eliminates the phrase "of blanketing" from paragraph 1111 of the Tariff Act of 1930. This will correct a ruling of the customs courts holding that steamer rugs were excluded from classification under paragraph 1111 (which prescribes the duties on blankets and similar articles made of blanketing), because the blanketing material of which they were composed had had no separate existence as blanketing before the rugs were made. The change will continue the administrative practice of several years and effect the original intent of the Congress.

Section 31 is the next and last section which might be regarded as controversial.

This section amends existing law relating to the free entry of articles not exceeding $100 in value brought in by returning residents, in three respects:

(1) To restate the present law to conform with certain decisions of the courts. This is to be accomplished partly by inserting the express requirement that in order to be entitled to the exemption articles

must be acquired abroad "as an incident of the foreign journey;" and partly by adding a new proviso specifically exempting articles entitled to free entry under this paragraph from the payment of internal-revenue taxes.

(2) To facilitate the identification of merchandise entitled to free entry under the paragraph by adding a new proviso to require all articles intended to be introduced under this provision without the payment of duty to be declared by returning residents in accordance with regulations to be issued by the Secretary of the Treasury.

(3) To limit the privilege of free entry to returning residents who have remained beyond the territorial limits of the United States for 48 hours. The present limitation of the privilege of free entry by a returning resident to once in 30 days is retained. This provision is designed to correct abuses which have become frequent in connection with persons living along our borders and making periodic trips into adjoining countries for the purpose of purchasing supplies.

Senator VANDENBERG. The general purpose of the section then is to strengthen the prohibition?

Mr. SPINGARN. That is correct. The construction that the Treasury gives to the existing law is that persons making trips abroad are only entitled to bring goods in duty-free under this $100 exemption when they have been acquired as an incident to the foreign journey, and not when the foreign journey was an incident to the acquisition of such goods. Whether they have been acquired as an incident to the foreign journey is obviously very difficult to determine, and it is believed that the insertion of the 48-hour provision will make that more practical of administration.

That concludes the comments I have to make on this bill.

Senator WALSH. Then there are not many sections in this bill where you have found a difference of opinion between the domestic producer and the importer?

Mr. SPINGARN. No; only five or six.

Senator WALSH. That is all for the present, Mr. Spingarn.

(The statement referred to by Mr. Spingarn is as follows:)

EXPLANATION OF H. R. 8099, THE CUSTOMS ADMINISTRATIVE BILL

The primary purpose of H. R. 8099, a bill to amend certain administrative provisions of the tariff and related laws, is to facilitate the efficiency of the Customs Service of the Treasury Department in the performance of its duties. The bill does not deal with duty rates and all attempts in the House to make duty amendments to it were vigorously repelled by the Ways and Means Committee. H. R. 8099 is a Ways and Means Committee revision of H. R. 6738, the provisions of which were strongly recommended to the Congress by the Treasury Department and were in accord with the program of the President.

The Ways and Means Committee held extensive public hearings on H. R. 6738, at which representatives of the Treasury Department, domestic industries, and American importers appeared and testified. A considerable number of amendments were proposed to the bill at these hearings. The Ways and Means Committee carefully sifted the proposed amendments and adopted those which it believed to be meritorious.

H. R. 8099 is, therefore, a clean bill incorporating the various amendments which the Ways and Means Committee made to the earlier bill. No amendments were made to H. R. 8099 on the floor of the House. The comparative print contained in the Ways and Means Committee report (H. Rept. 1429, 75th Cong.), therefore, shows the changes in existing law made by the bill in its present form, i. e., the form in which it was referred to the Senate Finance Committee after having passed the House by a more than two-thirds majority.

As was stated on the floor of the House, the primary purpose of the bill is to facilitate efficient administration of the customs laws. It cannot be termed an importers' bill nor can it be characterized as a domestic manufacturers' bill. Neither group was consulted by the Treasury Department in connection with its recommendations which are embodied in the measure. Such benefits as will accrue to either group are purely incidental to an increase in administrative efficiency. Besides the primary purpose of facilitating more efficient administration of the customs laws, the other major purposes of H. R. 8099 may be briefly summarized as follows:

(1) To restate the customs and other laws with the administration of which the Customs Service is charged, in certain instances where this may be profitably done in such a manner as will simplify their interpretation and administration.

(2) To fill in gaps in existing law to relieve administrative difficulties.

(3) To suppress abuses which have, in a few instances, grown up under existing law, and which cannot be corrected by administrative practice.

(4) To liberalize the laws in certain desirable respects where this will facilitate administrative efficiency without jeopardizing the revenue of the United States or the interests of the public.

H. R. 8099, like its predecessor, H. R. 6738, is strongly recommended by the Treasury and is in accord with the program of the President.

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1

This section gives the act a short title, the "Customs Administrative Act of 1937".

Section 2

The section excludes Wake Island, Midway Islands, and Kingman Reef from the territory in which our general customs laws are applicable. These islands are possessions of the United States now used as bases by an American commercial air line operated between this country and the Orient. At the present time the only inhabitants of, or activities on these islands, are those connected with the air line. If the existing provisions of law are to be observed, it will be necessary to station customs officers on these islands or direct customs officers to make periodic visits to such islands for the purpose of enforcing the customs laws since such islands must be treated for customs purposes as part of the United States. In order to obviate this unnecessary administrative difficulty and added expense and to place these islands in the same category as other insular possessions (except Puerto Rico), it is proposed to except such islands from the areas in which the provisions of the Tariff Act of 1930 and the Anti-Smuggling Act are applied.

Section 3

This section is a revision of the law requiring imports to be marked to indicate the country of their origin. The present amendment is designed to eliminate requirements of existing law which operate to impede the disposition of customs business. It requires each imported article or its container to be marked in a conspicuous place to inform the ultimate purchaser as to the origin of the article, eliminating the present requirement that the article and its immediate container and the outer package be marked. It provides exceptions for marking requirements where such exceptions can be justified on the basis of administrative experience. It provides that the 10 percent additional marking duty shall not apply, as it does under existing law, if goods are marked after importation but before entry into the commerce of this country. It retains the penal provisions against defacing or obliterating marking to indicate the origin of imports. The detailed changes of this important provision are as follows:

Subsection (a) eliminates the requirement of triplicate marking of imported merchandise, specifically limits marking requirements to articles of foreign origin, and authorizes the Secretary of the Treasury to prescribe the manner and method of marking articles or containers, that is, to determine the character of words, phrases, or abbreviations which shall be acceptable as indicating the country of origin and to prescribe whether the marking shall be done by printing, stamping, labeling, or other method. This subsection also authorizes the Secretary to except articles from marking requirements in closely defined circumstances. The exceptions cover those cases in which marking to indicate the country of origin is impracticable or would serve no useful purpose whatsoever, as in the case of articles which

are incapable of being marked, or cannot be marked prior to the shipment to the United States without injury or except at an expense economically prohibitive of their importation, or where the country of origin can be identified by the ultimate purchaser because of the appearance or character of the articles or the circumstances of their importation, or where like articles have long been exempted under existing practice but are not susceptible of concise description. No new exceptions can be made under this provision.

Subsection (b) would require the marking of a container only in the event that the contained article is exempted from the marking. However, the usual container of certain specifically enumerated types of articles excepted from the marking requirements (such as crude substances or articles to be processed in the United States by the importer in such a manner that any mark contemplated by the section would necessarily be obliterated) are not required to be marked.

Existing law provides for an additional duty of 10 percent ad valorem on all articles when the articles or their immediate containers are not marked at the time of importation, unless the articles are exported. Subsection (c) carries this provision forward but limits the application of the additional duty to those articles which go into channels of trade in the United States without being marked as required by law either before or after importation.

Subsections (d) and (e) deal, respectively, with the withholding of delivery of imported articles until properly marked and the penalties for defacing, destroying, etc., marks with intent to conceal the information given thereby and make no substantive change in existing law.

Section 4

This section extends the privilege of temporary free importation under bond provided by section 308 of the Tariff Act of 1930 to (1) articles to be worked on in the country and exported after being changed in condition otherwise than by alteration and repair but not changed to such an extent that drawback of duty could be secured thereon; (2) private automobiles, motor vehicles, etc., for business or professional use by traveling salesmen, physicians, and other nonresidents; (3) locomotives or other railroad equipment for use in emergencies; (4) professional equipment, tools of trade, and camp equipment; (5) articles of special design such as patterns or testing instruments for exclusive use in connection with the production of articles for export.

This section also authorizes the Secretary to defer for 90 days (or for 6 months on a basis of reciprocity with countries granting a like privilege) the exaction of a bond covering temporary free importations of vehicles and boats.

Section 5

This section revises the language of existing statutory law to state the rule established by court decisions that when duties on imports depend upon the quantity of goods imported such quantity is to be ascertained as of the time of importation, except where the law makes other provision for special cases. Section 5 also provides that no administrative ruling resulting in the imposition of a higher rate of duty or charge (except under the Antidumping Act) shall be effective prior to the expiration of 30 days after the date such ruling is published.

Section 6

This section authorizes collectors of customs to disregard differences of less than $1 between the total duties or taxes deposited or tentatively assessed and the amount of duties actually accruing and to admit articles free when the expense and inconvenience of collecting duty would be disproprotionate to the amount of such duty, but not exceeding $5 worth of goods in any one day in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States or $1 in any other case. These provisions are in accord with the present administrative practice.

Section 7

A recent court decision held that customs officers in ascertaining the foreign value of imported merchandise should consider all unrestricted offers for sale in the principal markets of the country from which the merchandise is exported, whether for home consumption or for export to countries other than the United States. Because of the necessity for additional investigations as to sales or offers for sale of merchandise for export to third countries, compliance with this decision

will result in serious delays in appraisement unproductive of any benefit to the revenue. This decision also makes it possible for a foreign manufacturer to offer his merchandise for sale to prospective purchasers in third countries at prices lower than those prices at which such merchandise is freely offered for sale for home consumption, with the knowledge that he would never make any actual sales in such countries. Under the decision referred to, this strategem would serve to reduce the duties imposed on his product when imported into the United States. Section 7, therefore, will eliminate this problem and restore the satisfactory practice formerly followed, by amending the definition of bases of valuation to be used for customs appraisals to eliminate the requirement established by the court decision that sales to third countries must be considered in appraisement.

Section 8

Existing law authorizes the assignment of customs officers and employees to overtime duty, and the payment for such overtime by the requesting master, owner, or agent only in connection with the unlading or lading under special license of merchandise, baggage, or passengers, the entering or clearing of a vessel or the issuing and recording of its marine documents, bills of sale, mortgages, or other instruments of title.

Merchandise, baggage, and persons may arrive otherwise than by vessel or vehicle, as in the case of livestock driven into the country. Moreover, overtime customs services are sometimes requested for the benefit of importers or exporters in connection with the segregation or manipulation of merchandise and in various other circumstances not included in the above enumeration.

The proposed amendment of the law is therefore deemed desirable to eliminate present inequities by uniformly requiring the payment of overtime compensation for all overtime services performed on special request and for the benefit of particular importers, exporters, or carriers.

Section 9

This section restates patchwork law in a clearer manner and covers gaps in existing law by imposing penalties on persons who bring in merchandise from a contiguous country otherwise than in a vessel or vehicle and do not report the arrival of such merchandise to customs, or who fail to obtain a permit from customs before proceeding inland, or who carry passengers beyond a customs station without reporting.

Section 10

This section adds a new provision to the tariff act to authorize the inspection, examination, and search of persons, baggage, or merchandise discharged or unladen from a vessel arriving in the United States or the Virgin Islands from a foreign port or place or from a port or place in any Territory or possession of the United States, whether directly or via another port or place in the United States or the Virgin Islands, and whether or not any or all of such persons' baggage or merchandise has previously been examined or inspected by customs officers. This provision will remedy the existing situation whereby passengers from foreign countries have an opportunity to mingle with passengers being transported between domestic ports, thus affording an opportunity for the foreign passengers to transfer to domestic search-immune passengers narcotics and other contraband as well as merchandise subject to duty.

Section 11

This section authorizes the Secretary of the Treasury by regulation to make such further exceptions to the present single entry requirement as he deems administratively desirable. Under existing law, with few exceptions, all merchandise arriving on the same vessel or vehicle and consigned to the same person is required to be included in one entry. The present exceptions from such requirement have proved so restrictive as to interfere with the orderly conduct of customs business and it is therefore deemed essential that they be broadened in scope.

Section 12

This section eliminates ambiguity in the provisions of existing law governing the handling and abandonment of unclaimed merchandise and restates these provisions so as to facilitate their administration. Specifically, the section revises existing law providing that imported merchandise for which entry has not

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been completed within 1 year shall be regarded as abandoned to the Government, and covers the administrative practice of permitting such merchandise, and merchandise regarded as abandoned because not withdrawn from warehouse within the statutory period, to be released to the consignee upon payment of duties and charges at any time prior to sale. It also settles any doubt as to when certain classes of goods are to be regarded as abandoned and as to the rate of duty applicable when the law is changed between the date of abandonment and the date of release to the consignee.

Section 13

This section makes express provision for requiring a bond to insure compliance with all laws and regulations governing the admission of merchandise into the commerce of the United States with respect to the packages of an importation which are released to the importer before examination and appraisement is made on the basis of the representative packages retained for that purpose. Existing law does not grant the Secretary of the Treasury specific authority to require such bonds except for the protection of the revenue and to assure compliance with the customs laws and regulations. The Customs Service, however, enforces laws other than customs laws and in view of this limitation, the Secretary's authority in some cases to release merchandise under bond when no customs question is involved is questionable. Section 13 will cure this situation.

Section 14

This section provides that a special regulation or instruction permitting examination of less than the usual 10 percent of each importation may be applicable at one or more ports, to one or more importations, or to one or more classes of merchandise. Court rulings that such regulations under existing law must have general application have seriously interfered with customs administration. Section 14 also provides that no appraisement shall be held invalid because less than the statutory quantity of merchandise was examined unless the party claiming such invalidity can show that an incorrect appraisement resulted from the failure to examine additional goods, in which event the appraisal shall be invalid only to the extent it is shown to be incorrect.

It provides further that when the appraisement of an importation is held to be invalid, the United States Customs Court must find the proper dutiable value of the goods.

Section 15

Section 516 (b) of the Tariff Act of 1930 provides machinery whereby domestic manufacturers, producers, and wholesalers may protest the classification or rate of duty imposed on imported articles of the same class or kind as that which they manufacture, produce, or sell.

Under existing law after a protest of this character is made to the Secretary of the Treasury, the Secretary may either agree with the complainant, in which case he notifies the collectors in the various ports, and 30 days after notification the higher rate of duty (that is, the one which the complainant maintains is the proper one) goes into effect; or the Secretary may disagree with the complainant, taking the position that the rate of duty which has been imposed in the past is the correct one. In the latter event if the complainant appeals to the customs courts from the Secretary's decision, the final ascertainment of duties is suspended in connection with all entries of merchandise of the protested class which are imported or withdrawn from warehouse more than 30 days after the Secretary's adverse decision. This suspension lasts until the final decision of the customs courts, which on the average will be rendered more than a year and a half later and in some cases as much as three and a half years later.

This suspension (which may involve literally thousands of entries) acts as a virtual embargo on all imports of that particular merchandise by responsible importers because the responsible importer does not know what duties he will finally be required to pay until the final decision of the customs courts, and if he continues to import that merchandise pending this decision, he risks a possible contingent liability. Existing law thus invites domestic manufacturers, producers, and wholesalers competing with domestic importers to initiate proceedings which may not be well-founded and which may be pursued without real hope of ultimate success in the knowledge that a barrier may be maintained against foreign competition for as long as the proceedings may be kept alive. Thirty-two complaints have been filed with the Secretary under section 516 (b) but not one has been sustained by the courts. Section 15 amends this provision, not to deprive the

domestic competitor of the privilege of appealing to the courts from a ruling of the Treasury adverse to his claim that higher duties should be imposed, but to shorten the period during which domestic importers may be subject to contingent liability. Under the revised provision, importers may import their merchandise upon payment of duties in accordance with Treasury findings until a prima facie case against the correctness of such findings is made by a judicial decision adverse to the Treasury's findings.

Section 16

This section restates the law with respect to refunds and errors, with minor changes designed to express more precisely the established interpretation of existing law. It places a 1-year limitation upon the time within which an erroneous assessment of duty on personal or household effects may be corrected without a formal protest having been filed.

Section 17

This section provides that the expenses of customs officers in connection with admeasurement of vessels at places other than a customs port of entry shall be borne by the owners of the vessels requiring such special services, and that all reimbursements of expenditures from customs appropriations shall be deposited to the credit of the appropriation from which they were paid.

Section 18

This section provides that taxes on imports shall be construed to be customs duties only if the law under which they are imposed designates them as such or provides that they shall be so treated. The purpose of this section is to overcome decisions of the customs courts holding internal revenue taxes levied on imports under internal revenue laws to be customs duties within the purview of exemptions and preference provisions of the customs laws.

Section 19

This section authorizes the Secretary of the Treasury to permit merchandise in transit through the United States now required to be carried by a common carrier to be carried otherwise than by a common carrier if no common carrier facilities are reasonably available. The present restriction operates with considerable hardship in certain regions where there are no common carrier facilities available, particularly in certain areas along the Canadian border where the best and in some cases the only practical route between two points in Canada is a highway running in part through the United States. Section 19 will give corresponding authority to the United States to do what the Canadian authorities are already doing in connection with the shipment of goods between two points in the United States through Canada.

The section also authorizes the Secretary of the Treasury to permit the transit through the United States otherwise than by bonded common carriers of motor vehicles and chasses of such vehicles. This will permit manufacturers and dealers to transfer automobiles between foreign points through the United States under their own power or in special auto vans.

Section 20

This section expressly provides for existing administrative practices with respect to the transfer of the right to withdraw imports entered for warehouse, provides that such transfers shall be irrevocable in defined circumstances, and defines the customs rights of the transferee. Provision is also made covering the administrative practice of permitting merchandise to be withdrawn for transfer to another bonded warehouse at the same port.

Section 20 also authorizes the refund of full duties when merchandise is exported on which duties have been paid and which has remained continuously in customs custody while in this country. Present law authorizes the refund of only 99 percent of the duties. The change will eliminate an administrative problem and make the provision affected conform with the provision of present law authorizing the refund of 100 percent of duties when duty-paid merchandise is destroyed under customs supervision.

Section 21

This section eliminates the provision in existing law (first adopted in the 1930 Tariff Act) limiting the storage of imported grain in bonded warehouses to a period of 10 months. It will thus place imported grain in the same status as other imported merchandise by extending the permissible storage period in bonded warehouses to 3 years. The 10-month limitation was originally adopted to afford more storage space for domestic grain. Section 21 will apply to grain imported prior to its effective date as well as thereafter.

Section 22

This section restates the law prohibiting the refund or remission of duties by reason of exportation after imports are released from customs custody to include exceptions established by court decisions and administrative practice.

Section 23

This section covers a gap in existing law by making it a crime for any unauthorized person to put a customs seal, fastening, or mark on any warehouse or package containing merchandise or baggage, or willfully to assist or encourage another so to do.

Section 24

This section amends the law relating to reports by customs field officers of violations of law to provide that such reports shall be made to the United States attorney only if action by him will be required, and to eliminate a requirement that such reports be made to the Solicitor of the Treasury, an office which has been abolished.

Section 25

This section amends the law relating to the disposition of customs seizures to conform to recent laws prohibiting the sale at auction of certain classes of seized goods.

Section 26

This section changes the law relating to disposition of the proceeds from the sale of customs seizures to eliminate any basis for a claim that any part of such proceeds is available to cover duties on the seized goods which can be collected from the importer, and thereby relieve the importer from liability for duties.

Section 27

This section further clarifies the authority of the Secretary to exact security in cases where no express statutory authority exists to include cases not only where bonds are required for the protection of the revenue but also in order to assure compliance with noncustoms laws and regulations enforced by customs officers. It provides that a consolidated bond (single entry or term), in lieu of separate bonds, may be taken to assure compliance with two or more provisions of law. It authorizes cancelation of a bond in the event of a breach of a condition thereof without payment of any penalty in cases where a violation is entirely a technical one or without any real culpability on the part of the importer.

Section 28

Existing law provides that certain kinds of wool may be admitted without payment of duty under bonds conditioned upon the production within 3 years of proof that the wool so admitted has been used in the manufacture of carpets or other enumerated articles. If such proof is not so furnished, regular duties accrue, and if the wool has been used in the manufacture of other articles, a penalty of 50 cents per pound also accrues.

Two principal difficulties have been encountered in the administration of this statute, (1) the practical impossibility of identifying the articles made from particular lots of imported wool so that the time limitation in certain products may be observed; and, (2) the difficulty of determining whether certain products resulting from the processing of imported wool into carpets or other enumerated articles are normal wastes so that the wool represented by such products may be considered to have been used in the manufacture of the enumerated articles, in compliance with the conditions of the bond.

Section 28 (while continuing to safeguard domestic wool interests) will eliminate these difficulties from the law without prejudice to the revenue and without restriction or expansion of the tariff privileges now accorded carpet and similar wool by amendment of the statute, (1) to eliminate the present requirement that proof be furnished within a specific time as to the identified use of particular importations and to substitute in lieu thereof a system of control by bonds, penalties, and regulations to prevent the use at any time of conditionally free importations otherwise than in the manufacture of the enumerated articles unless full duties are promptly paid; and (2) to establish with certainty the tariff status of all wools not used in making the enumerated articles, unless such wools are wastes in such condition that such use is in the usual course of manufacture commercially impracticable.

The section also authorizes the continuance of the existing administrative practice of assessing duty on noils (a type of commercial usable long staple waste) diverted from manufacture of the enumerated articles.

Section 29

This section eliminates the phrase "of blanketing" from paragraph 1111 of the Tariff Act of 1930. This will correct a ruling of the customs courts holding that steamer rugs were excluded from classification under paragraph 1111 (which prescribes the duty on blankets and similar articles made of blanketing) because the blanketing material of which they were composed had had no separate existence as blanketing before the rugs were made. The change will continue the administrative practice of several years and effect the original intent of the Congress.

Section 30

This section consolidates the tariff provisions relating to the free entry of American goods returned after having been exported. It eliminates the present requirement that to be entitled to free entry the goods must be imported by or for the account of the person who exported them. It extends the privilege of free return of containers of merchandise to new kinds of containers of foreign origin which have once paid duty. It provides that domestic products exported with benefit of draw-back of duties paid on component materials or without payment of internal-revenue taxes may be returned under conditions no less favorable than those applicable at the time of importation to like articles of foreign origin. It extends the provision granting free entry to articles exported to be repaired to articles exported to be altered.

Section 31

This section amends existing law relating to the free entry of articles not exceeding $100 in value brought in by returning residents, in three respects:

(1) To restate the present law to conform with certain decisions of the courts. This is to be accomplished partly by inserting the express requirement that in order to be entitled to the exemption articles must be acquired abroad "as an incident of the foreign journey"; and partly by adding a new proviso specifically exempting articles entitled to free entry under this paragraph from the payment of internal-revenue taxes.

(2) To facilitate the identification of merchandise entitled to free entry under the paragraph by adding a new proviso to require all articles intended to be introduced under this provision without the payment of duty to be declared by returning residents in accordance with regulations to be issued by the Secretary of the Treasury.

(3) To limit the privilege of free entry to returning residents who have remained beyond the territorial limits of the United States for 48 hours. The present limitation of the privilege of free entry by a returning resident to once in 30 days is retained. This provision is designed to correct abuses which have become frequent in connection with persons living along our borders and making periodic trips into adjoining countries for the purpose of purchasing supplies.

Section 32

This section provides that the bill shall become effective 30 days after its enactment, except as otherwise provided for in the bill.

Senator WALSH. The committee will now hear some of the witnesses who have been asked to appear today. Mr. Emerson, come forward please.

STATEMENT OF RALPH EMERSON, LEGISLATIVE REPRESENTATIVE OF THE MARITIME UNIONS AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION

Senator WALSH. Your full name is Ralph Emerson?

Mr. EMERSON. Yes, sir.

Senator WALSH. Your residence in Washington, D. C.?

Mr. EMERSON. Yes, sir.

Senator WALSH. What is your profession?

Mr. EMERSON. I am the legislative representative of the maritime unions affiliated with the Committee for Industrial Organization. I am also representing here today the Maritime Cooks and Stewards Union of the Pacific, and Marine Firemen, Oilers and Water Tenders Union of the Pacific.

Senator WALSH. What features of the bill do you desire to present to the committee?

Mr. EMERSON. Mr. Chairman, I wish to confine myself solely to section 31 on pages 38 and 39.

Senator WALSH. The committee will be pleased to hear your views.

Mr. EMERSON. Although there is at present no statute on our law books that states that American merchant seamen cannot bring into this country, free of duty, foreign manufactured goods or articles up to and including a value equal to the law governing other classes of American citizens under this subject, our Treasury Department has instituted a ruling of their own to cover this subject. This ruling is highly discriminatory to American seamen. For example, if an American merchant seaman wishes to get an exemption from paying duty on any little articles purchased abroad he has to sign a form used by the customs' authorities to the effect that he does not intend to go back to sea in order to make a living for a specified period of time.

Now, it will be noted that in the bill H. R. 8099, page 39, lines 5 to 8, the wording is as follows:

> *Provided further*, That the exemption authorized by the preceding proviso shall apply only to articles declared in accordance with regulations to be prescribed by the Secretary of the Treasury, * * *

and so forth.

This being the case, and the Treasury Department having already a ruling in effect, as regards American merchant seamen, that is adverse to their best interests and highly discriminatory against them, it becomes necessary for us to have included our proposed amendment to remedy this situation.

I will come to the amendment in a moment.

It is peculiar to note that American merchant seamen are the only class of American citizens who are being discriminated against as regards the benefits and privileges that other Americans can receive under this law. It must also be noted that the personnel of our Navy are entitled to and do receive these benefits and privileges, thus leaving the merchant seamen the only class discriminated against.

In view of the fact that the merchant seamen have not as yet been included in the Social Security Act (although legislation to remedy this is being considered), and do not as yet become entitled to the

benefits of unemployment insurance, and are "rated" by private insurance companies if they try to take out life insurance for the reason that theirs is known as a hazardous profession, and also, as they still receive very little compensation, in the form of wages as compared with many workers in industries ashore, we feel that the least that can be done for this class of American workers is to allow them to receive the same benefits and privileges as are accorded other American citizens through the medium of this proposed legislation in section 31 of the bill H. R. 8099.

I have a very short amendment which I would like to submit to be added to section 31 on page 30. The amendment is as follows:

And provided further, That in the case of Merchant Marine seamen sailing on American Merchant Ships that the exemption authorized in this paragraph shall apply to those seamen who have remained beyond the territorial limits of the United States for a period of not less than forty-eight hours and who have not taken advantage of the said exemption within the 6-months period immediately preceding their return to the United States.

Senator VANDENBERG. You mean, Mr. Emerson, that a seaman coming in is refused any extension privilege whatever?

Mr. EMERSON. Yes, sir; we are the only class of people who are refused any exemption privilege whatever.

Senator WALSH. That is by regulation and not by law?

Mr. EMERSON. Yes, sir; but we see no other way of doing it unless legislation is enacted. If this bill goes into effect the way it is, and as it states here, "in accordance with regulations to be prescribed by the Secretary of the Treasury," as the Treasury Department has already made rules and regulations it is going to affect us adversely.

Senator WALSH. Have you that regulation of the Treasury Department?

Mr. EMERSON. I do not have a copy of it here; no, sir.

Senator WALSH. Will the Treasury Department furnish us with a copy of it and also comment on this statement, or the proposed amendment before the hearing is over?

Mr. SPINGARN. We will be glad to do so.

Senator VANDENBERG. Your amendment seeks no other privilege than any other citizen gets under the section?

Mr. EMERSON. We do not seek as much. We ask for every 6 months, because we realize we are in a favorable position to bring things in. I say the adding of our proposed amendment would also do away with certain practices. Sometimes, you know, a seaman will say, "I am not getting any money and I have got a wife; she likes something and I will take a chance and smuggle something in." They have done that, but not on a large scale. This would do away with that.

They also wonder why they cannot bring in little things that they could use around their homes. Of course, there are a great many of our seamen that cannot even get married on the wages they get, but they want the same privilege that others get. We do not ask for a 30-day exemption, we just ask for a 6-month exemption.

Senator WALSH. Thank you, Mr. Emerson. The next witness is Mr. Van Allen.

STATEMENT OF JOHN W. VAN ALLEN, BUFFALO, N. Y., REPRESENTING THE BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Senator WALSH. Your full name is John W. Van Allen?

Mr. VAN ALLEN. Yes, sir.

Senator WALSH. Your residence is Buffalo, N. Y.?

Mr. VAN ALLEN. Buffalo, N. Y.

Senator WALSH. You represent the Buffalo and Fort Erie Public Bridge Authority?

Mr. VAN ALLEN. Yes, sir.

Senator WALSH. What section of this bill are you addressing yourself to?

Mr. VAN ALLEN. Section 8. I am here because of the discussion that took place in the House and that can be found in the Congressional Record, particularly on page 11936 and through 11943.

I would like, first, to give something of the background of the argument that took place in the House with respect to a certain amendment, the foundations of which were given to the members of the Ways and Means Committee of the House but which do not appear in the Record.

Senator WALSH. Was this discussion with reference to the amendment offered on the floor of the House?

Mr. VAN ALLEN. Yes; it was, by Congressman Andrews.

Senator WALSH. To change the reported bill by the Ways and Means Committee?

Mr. VAN ALLEN. Yes.

Senator WALSH. Was the amendment rejected in the House?

Mr. VAN ALLEN. The conversation that took place on that, Senator, was that a statement was made that the Treasury Department had no intention of imposing upon international bridges a charge for extra time for customs employees. You will find it on page 11943 of the Congressional Record of August 19, 1937, and this was the statement:

> We have no fault to find with the bill because we were assured by the gentleman in charge of this bill, Mr. Cullen, and the gentleman from Massachusetts (Mr. McCormack) and also by representatives of the Treasury Department that there is no intent on the part of the Treasury Department to interfere with the present method of handling matters at the bridges.

Then there was a further discussion in which it was stated that there would be no objection to an amendment—to the adoption of this amendment in the Senate committee. You realize that when this matter was up it was at the close of the session, they were anxious to forward this bill as rapidly as possible, and if it had to go back to the Ways and Means Committee to consider this amendment it might seriously delay it, and consequently the conversation that took place was that there would appear to be no objection to the adoption of this amendment in the Senate.

Senator WALSH. In other words, some of you were led to believe that the attitude of the members of the Committee on Ways and Means was favorable and when this bill got to the Senate they would not make objections against your amendment?

Mr. VAN ALLEN. That is correct. That was our understanding.

Senator WALSH. Have you the amendment here?

Mr. VAN ALLEN. Yes; the amendment is embodied in the Congressional Record.

Senator WALSH. Do you have it now to present to this committee?

Mr. VAN ALLEN. It is in the Congressional Record. What I should particularly like to do is to give you the foundation.

Senator WALSH. Is the amendment a long amendment?

Mr. VAN ALLEN. No; it is not, sir. Shall I read the amendment?

Senator WALSH. I wish you would.

Mr. VAN ALLEN (reading):

> At the end of section 8, after the words "public interest," insert the following: "Or to authorize the collection of overtime compensation for services of a kind which were being regularly performed by customs officers or employees assigned to regular tours of duty at nights or on Sundays or holidays in connection with international traffic over ferries or highway bridges or through highway tunnels on July 1, 1937, and which shall hereafter be performed in connection with such traffic."

Senator WALSH. Well, now, what is the present provision of the law with reference to overtime service by customs officers on international bridges and just what does the amendment propose to do?

Mr. VAN ALLEN. You must take into consideration section 451 and section 5 of the existing law. At the present time, as decided in the case of a bridge company against Davidson, in 1922, by the United States Supreme Court, the Treasury Department cannot charge for overtime services of customs officers on international bridges.

Senator WALSH. Cannot charge whom? The importers?

Mr. VAN ALLEN. No; not the importers, they cannot charge the bridge companies.

Senator WALSH. The bridge companies?

Mr. VAN ALLEN. Yes. As the law exists today they cannot charge the bridge companies for overtime services on international bridges because in the preceding act it refers only to vessels, merchandise, baggage, passengers, and so forth, but it does not refer to bridges.

Senator WALSH. In other words, the present act refers to rail terminals and water terminals?

Mr. VAN ALLEN. Yes, sir. So that at the present time the Treasury Department has no discretion under which they may impose these charges upon international bridges for overtime services. Now, if this bill goes through, in our view of the situation, it does give the Treasury Department discretion to impose this charge for extra-time service on international bridges.

Now, the Treasury Department has said that they have no intention of charging it even though the discretion may be there. Nevertheless, in 1921 the Treasury Department thought they had that discretion and attempted to impose that charge, and hence this litigation which resulted in a decision that they could not as the law existed, but as it is reinstated now, we feel that they would have discretionary power to charge for this extra time service. The purpose of the amendment is to clarify that situation so that that discretion is not left with the Treasury Department.

Senator VANDENBERG. What is the fact? Is there a great deal of overtime service on these bridges?

Mr. VAN ALLEN. Most of the bridges run 24 hours.

Senator VANDENBERG. And there is overtime?

Mr. VAN ALLEN. Yes. That is, there are three shifts of 8 hours each.

Senator VANDENBERG. That is not overtime if they work in shifts.

Mr. VAN ALLEN. I mean this act would give the Treasury Department discretion, as we think, to charge for everything excepting an 8-hour day shift.

Senator WALSH. It would permit the Treasury Department to take a shift that ran for 8 hours in the day and continue it on into the night and charge for overtime?

Mr. VAN ALLEN. That is right, sir.

Senator WALSH. Is this amendment favored by the customs officials on these international bridges?

Mr. VAN ALLEN. By the customs officials?

Senator WALSH. Yes.

Mr. VAN ALLEN. I could not answer as to that.

Senator WALSH. Are they the ones who are asking for this amendment, or is it the bridge companies?

Mr. VAN ALLEN. The bridge companies; yes.

Senator WALSH. They are asking for this?

Mr. VAN ALLEN. The bridge companies are asking for this. I would like to give you, if you can bear with me a moment, our particular situation.

The bridge which I represent is the so-called Peace Bridge which crosses the Niagara River between Buffalo, N. Y., and Fort Erie, Canada. That bridge is operated by an Authority created by the State, which is a municipal corporate instrumentality of the State of New York. By legislation of Canada this same Authority, upon which there are three Canadian members, operates on both sides of the river. In other words, this is a State instrumentality, this Authority that I am talking for.

When the bridge was originally built there was a provision in the act, passed by Canada and passed by the State of New York, under which, after the bonds were retired and the obligations of the bridge paid off, the part of the bridge that was in the State of New York should belong to the State, and that part which was in Canada should belong to the Dominion of Canada.

Now, this Authority was created in 1933 by the State itself, so that we are a State institution. It was created under a program that the State of New York adopted first in the Port of New York Authority in 1921, and in 1933 there were several acts of the State legislature creating Authorities, the purpose of which was to relieve the State from the burden on its budget by creating these Authorities who could issue bonds and not obligate the State or interfere with its fiscal policy.

Now, in 1933, when this act was passed, the State authorized us to issue bonds with which to pay up the obligations of the previous bridge company and take it over by the State of New York and the Dominion of Canada. So that, in effect, this bridge is owned by the Dominion of Canada and the State of New York, subject only to the paying off of those obligations, which amount to approximately $4,000,000.

Now, we are in a rather peculiar position in that bridge situation, for this reason: In the Dominion of Canada they furnish us with customs and immigration authorities free of charge. That is all done at the expense of the Dominion of Canada. Canada owns half the bridge and New York State owns the other half. Now, if, in the exercise of its discretion, the Treasury Department should impose a charge on us for extra time outside of the 8 hours in the daytime, one-half of that charge would be imposed upon the Dominion of Canada,

which is already furnishing their custom and immigration service free, and that hardly seems to be a fair treatment of the Dominion of Canada.

When I say "half the charge," I say it because all of our toll must be devoted to the retirement of our obligations, thus hastening the day when it will be turned over to the two countries.

Senator WALSH. In other words, this charge would be a liability against the total assets and receipts of the bridge company?

Mr. VAN ALLEN. That is right.

Senator WALSH. And Canada would have to pay its share?

Mr. VAN ALLEN. That is right, in addition to furnishing its own customs and immigration officers free. This creates a situation that we hoped would be prevented by adopting this amendment.

Now, the Treasury Department says it has no intention of exercising such a discretion. Well, in 1922, under the preceding administration, the Treasury Department attempted to do that very thing, and we do not want to take any chances. We are perfectly satisfied that this present Treasury Department does not have any intention of using its discretion, but changes take place in Washington now and then.

Senator WALSH. You think the present law gives the Treasury Department that discretion?

Mr. VAN ALLEN. I think the new bill gives the Treasury Department discretion.

Senator WALSH. Not the present law?

Mr. VAN ALLEN. Not the present law.

Senator WALSH. You are objecting to this new bill having such broad language as to give that discretion?

Mr. VAN ALLEN. Yes.

Senator WALSH. You want that discretion eliminated and the present law to stand?

Mr. VAN ALLEN. By the adoption of this amendment.

Senator WALSH. Which will make it clear that they have no discretion?

Mr. VAN ALLEN. Yes; the members of the Ways and Means Committee, Mr. Cullen and the others, also felt that if this bill did give discretion to the Treasury Department it ought to be limited.

Senator WALSH. Does the Treasury Department have any opinion on this proposal?

Mr. SPINGARN. I do not think the Treasury Department will have any objection, in principle, to the amendment. We would like an opportunity to comment on the specific language.

Senator WALSH. Very well.

Mr. SPINGARN. We will make a report to you on that, just as in the case of the Ways and Means Committee.

Senator VANDENBERG. I should like to ask as to the effect on the customs employees. At the present time, even though they work in shifts, are there occasions when they do have to work overtime?

Mr. VAN ALLEN. No, there is no occasion when they have to work overtime. There are times when they are very accommodating and come back, when the traffic is particularly heavy, but they do that as a courtesy to the public.

Senator VANDENBERG. What is their attitude toward this proposition?

Mr. VAN ALLEN. I cannot speak for the customs employees. I think what they had more in mind was where a ship comes in at irregular hours and they are called upon to perform a service, or when a train comes through at a particular hour, an irregular hour, and they are asked to perform a special service, in other words, in cases where there are special circumstances they do not want to perform extra services for nothing, and I do not blame them for that, but I do not think it should apply on international bridges. I think that is an obligation that the Government has, for the free flow of traffic between countries.

Senator VANDENBERG. Could it be said that the exception you seek would favor trucking as against transportation by water?

Mr. VAN ALLEN. I do not see how it could, sir.

Senator WALSH. Your position is that on international bridges, if occasion arises where it is necessary to work overtime by Government customs officials the Government itself should pay the extra expense and not the bridge?

Mr. VAN ALLEN. That is correct. Although the other bridges that would be affected by this are not State instrumentalities such as ours is, still there are other bridges in the United States that are just as seriously affected as we are, because they likewise lead into foreign countries. There are the bridges at Brownsville, Tex., El Paso, Tex., Detroit, Buffalo, Niagara Falls, and the St. Lawrence River, and in each one of those cases the situation is comparatively the same. In crossing the Rio Grande of course there are relations with Mexico, and crossing the river at Detroit and Niagara River, and Thousand Islands, it affects our relations with the Dominion of Canada.

Senator VANDENBERG. I have a very definite recollection, without being specific, that the customs employees at Detroit have very bitterly complained against the fact that they are required to work overtime without compensation in connection with the flow of traffic between Windsor and Detroit.

Mr. VAN ALLEN. Yes, but I understand that criticism does not direct itself toward the bridges.

Senator VANDENBERG. I am not informed as to that.

Mr. VAN ALLEN. That is my understanding.

Senator WALSH. That is all, sir. Are there any other witnesses here that would like to be heard?

Mr. VAN ALLEN. I will be unable to be here except today, and if we could have whatever comment the Treasury Department wishes to make as early today as possible it would help me very much.

Senator WALSH. They have indicated that they would sit in with you and discuss the language probably sometime this afternoon.

Senator VANDENBERG. At this point, Mr. Chairman, may I ask the Treasury Department representatives to inquire into a dispute over overtime between the customs employees at Detroit and the Treasury Department which has been of long standing, to inquire into that in the course of the day? I remember there was a committee headed by Mr. Giessler at Detroit. I would like to know how this thing is involved in that controversy.

Mr. SPINGARN. We will be glad to do that, Senator.

STATEMENT OF DANIEL SCANLON, THOUSAND ISLANDS BRIDGE AUTHORITY, WATERTOWN, N. Y.

Senator WALSH. What is your full name?

Mr. SCANLON. Daniel Scanlon, of Watertown, N. Y.

Senator WALSH. You are an attorney?

Mr. SCANLON. Yes.

Senator WALSH. Representing what bridge company?

Mr. SCANLON. Thousand Islands Bridge Authority.

Senator WALSH. Is that a private bridge?

Mr. SCANLON. It is not a private bridge, it is a public bridge being constructed now by virtue of authorization of Congress given in 1929, and through the set-up of a public benefit corporation authorized by the laws of the State of New York. We are engaged presently in building three bridges across the St. Lawrence River to furnish the only public and fixed bridge facilities between New York State and Canada, with the exception of the so-called Cornwall Bridge, which is a private railroad bridge recently planked to accommodate highway traffic.

Senator WALSH. Where are these bridges located?

Mr. SCANLON. They leave the American mainland between Clayton and Alexandria Bay, cross through the center of Thousand Islands and reach the Canadian mainland halfway between Kingston and Brockville at a point known as Ivy Lea. We take the position that the bridges are essentially public in character and there is no difference in the way they should be treated here.

Senator WALSH. Are they toll bridges?

Mr. SCANLON. They are presently toll bridges, until the cost of construction of the bridges is paid, and then they revert respectively to Jefferson County for New York State and to the Province of Ontario, so far as the Canadian bridge is concerned, for the Dominion of Canada.

We take the position that our bridges, and the facilities afforded, are no different than any public highway crossing, and that we are entitled, or that the public is entitled to the full-time 24-hour service of the customs and immigration officials without the possibility of being subjected to these extraordinary charges.

Senator Vandenberg I think has put his finger on it when he refers to the shifts. We contemplate, and the Department contemplates furnishing 24-hour service at the bridges, and that means there will be three shifts of employees of the two services. We think that there should not be any question about our being entitled to that. We make the point that if we were subjected to the additional charge it would imperil the operation of the bridge and would certainly impose an undue burden on the highway travelers.

The suggested amendment of Mr. Van Allen we think is sufficient, but we would like to make the point, and have the committee bear it in mind, that there is building at the present time a highway bridge to be opened to the public and to be operated 24 hours a day that is not quite covered by the language in the proposed amendment, if it be interpreted strictly, for it says of the kind that was being furnished on July 1, 1937. There is, of course, no service yet, and we think, in principle, that we are entitled to be covered, and I take it, from what

has been said on behalf of the Treasury Department, that we will not have much difficulty in working out a satisfactory amendment.

Senator VANDENBERG. Is there any difference between an international bridge and an international tunnel, in respect to the thing that you are talking about?

Mr. SCANLON. I do not see that there is, in principle, if the international tunnel becomes ultimately a publicly owned facility and is a toll facility for the present only for the purpose of paying its cost of construction. That is the situation that we have, purely a self-liquidating public improvement, as the courts have found.

Senator VANDENBERG. Does the proposed amendment as drawn cover all bridges?

Mr. VAN ALLEN. It covers bridges, tunnels, and ferries. Now I think there has been some discussion with respect to ferries, because they ordinarily do not run the whole 24 hours. I am answering your question again with respect to employees, but tunnels and bridges are in respectively the same situation, because I think they all run 24 hours. I think there is only one tunnel, and that is in the city of Detroit.

As to this suggestion of Mr. Scanlon, we attempted to cover his situation in the last part of the amendment which states, "and which shall hereafter be performed in connection with such traffic." We believe that we have covered Mr. Scanlon by that phraseology, but if there is any other way in which it can be clarified we certainly have no objection. We think they should be included, the same as ours.

Senator WALSH. Thank you, Mr. Scanlon. Mr. Lockett.

STATEMENT OF JOSEPH F. LOCKETT, BOSTON, MASS., REPRESENTING THE INSTITUTE OF CARPET MANUFACTURERS, INC., NEW YORK CITY

Senator WALSH. Mr. Lockett, your full name is Joseph F. Lockett?

Mr. LOCKETT. Yes, sir.

Senator WALSH. You are an attorney at law, Boston, Mass.?

Mr. LOCKETT. Yes, sir.

Senator WALSH. You are here representing the Institute of Carpet Manufacturers, Inc., New York City?

Mr. LOCKETT. That is right.

Senator WALSH. What section of the bill would you like to discuss with the committee?

Mr. LOCKETT. Senator Walsh, and members of the committee: The Institute of Carpet Manufacturers is interested in three sections of this bill. The first is section 3 on page 2 which seeks to change section 304 commonly known as the marking provisions of the Tariff Act of 1930. The provisions, as they appear in the bill, are a forward step in liberalizing the marking of containers of raw products, and we, therefore, endorse them. There have been, however, a number of cases, meritorious cases—and you, Senator Walsh, referred to one of them this morning—where, under the interpretations as placed upon section 304 of the Tariff Act of 1930, considerable hardship has resulted.

I suggest that an amendment to the bill be offered, and in doing this I am appearing personally and not on behalf of the Institute of Carpet Manufacturers.

Senator WALSH. Personally, you are appearing as an attorney for an importer who has been penalized under the old law?

Mr. LOCKETT. Yes; I mean if it is possible to differentiate my appearance in one case with that of another.

Senator WALSH. Yes.

Mr. LOCKETT. This amendment would provide that as to all cases pending before the customs courts and the Treasury Department, where it can be shown that the articles were marked, or their containers were marked with the English name of the country of origin before delivery and before withdrawal from customs custody the duties assessed under section 304 (b) of the Tariff Act of 1930 shall be refunded.

Senator WALSH. If the shipment that you have in mind came into this country after this bill is enacted into law would your client be subject to a penalty?

Mr. LOCKETT. No; provided the Secretary of the Treasury exercised his discretion under either subsections d, e, f, g, or h, which appear on pages 3 and 4, which authorizes the exemption of marking of certain articles. That would permit the operation of the provisions appearing on page 5 beginning with line 3 and running to line 7. This sentence provides that the containers need not be marked if an exemption is made by the Secretary that certain articles do not have to be marked under the provisions just cited.

Senator WALSH. Have you prepared such an amendment?

Mr. LOCKETT. Unfortunately I do not have it here. I have submitted it to the legislative counsel. I have been working on it.

Senator WALSH. Suppose this section is made retroactive, would that not cover you?

Mr. LOCKETT. I think it would, especially if the provisions of subsection (c) on page 5 of the bill were made retroactive.

Senator WALSH. We would like to know, of course, how much that would extract from the Public Treasury, of the money that has already been collected.

Mr. LOCKETT. Probably the distinguished counsel for the Treasury Department, who are here, have some conception of the number of such cases.

Senator WALSH. Are there many cases?

Mr. LOCKETT. I really do not know; I would not say there were many, but I believe there was some.

Senator WALSH. Has the Treasury Department been able to get that money out of your client?

Mr. LOCKETT. That has been paid. Unfortunately it has been charged to and paid by the shippers in Argentina. They are very much disturbed about the matter and made representations through the Department of State to the Treasury Department seeking relief.

Senator WALSH. They held it up so long that I thought you were probably successful. They are still holding it up?

Mr. LOCKETT. No, the Department has decided this case against the importer.

Senator WALSH. Perhaps Senator Vandenberg would be interested to know just what was omitted in the marking of that wool in your case.

Mr. LOCKETT. I would be very pleased to tell him.

Senator WALSH. Not in detail now.

Mr. LOCKETT. No; this case refers to a lot of wool which came in and was marked with the names of the estancias in South America. The names of the estancias are all published by the Argentine Government. This importer of wool was a manufacturer and the names of the estancias agreed with the names on his orders, but unfortunately through a mix-up, the containers were not marked with the name "Argentina." Now this wool came from the Province of Tierra del Fuego, down near the Straits of Magellan, and later shipped about 2,500 miles north to Buenos Aires where it was transferred to another ship. When it was put aboard that other ship someone neglected to mark the containers with the word "Argentina." There were other lots of wool similarly marked but the Treasury was able to grant relief because the containers were marked with the name "Argentina" while on the ship and before it arrived at the port of entry. Now when this particular lot of wool arrived in Boston the containers were marked with the names of the estancias. Under the law as interpreted, because when it was imported the containers were not marked "Argentina," the Treasury assessed a duty of 10 percent in addition to all the rest of the duties. These wools were put in a bonded warehouse, and while in a bonded warehouse they were marked with the name "Argentina," under customs supervision. So, therefore, when they were withdrawn and went into the commerce of the country the containers were then properly marked with the name "Argentina," but because they were not so marked when they were imported the lot was assessed a duty of 10 percent which as stated was in addition to the other duties assessed.

Now I contended that as those wools did not go into the commerce of the country, and as this purchaser was the only one who had had access to those wools, the markings of the names of the estancias on the containers of those wools gave to him a better understanding of the country of origin than the name "Argentina" could possibly have given to him.

For example, I think there are 47 grades of wool shipped from Argentina, and a man looking at the coverings marked "Argentina" would not know whether he was getting his particular wools or not. In this instance the containers were marked with the names of the estancias, which names agreed with the names on his orders, and yet he was assessed a penalty.

The equity in this case is so strong and the injustice of the case under the law as applied is so strong that it would seem if there was any proper way to refund the duties paid and in other pending cases as well, by an amendment to this bill it ought to be done. Now I imagine there are many other cases.

Senator WALSH. I think we would have to introduce a special bill to cover that claim.

Mr. LOCKETT. Senator, I am not posted as to the best remedy to pursue, but I thought it could be accomplished by an appropriate amendment to this bill.

Senator WALSH. This new bill does, in section 3, clarify that law and prevents the narrow and rigid interpretation that has been placed on it.

Mr. LOCKETT. That certainly is a step in the right direction.

Senator WALSH. Is there anything more about section 3 that you want to talk on?

Mr. LOCKETT. No, sir.

Senator WALSH. What other section do you want to discuss?

Mr. LOCKETT. The next section in which the Institute of Carpet Manufacturers is interested is section 15 on page 17. Mr. Spingarn, with his usual clarity, has exlained the purposes of this section, and while the domestic manufacturers whom I represent are not exactly satisfied, we do not oppose that section in its present form.

Senator WALSH. What is the next section?

Mr. LOCKETT. The next section is section 28, on page 32, which seeks to amend certain provisions of paragraph 1101 of the Tariff Act of 1930. Now that is of particular interest to the clients whom I represent, because the carpet manufacturers import large quantities of wools, which are free of duty when used, among other things, in the manufacture of carpets, rugs, and floor coverings. I want to express my appreciation to the Department, and especially to the Bureau of Customs, for the conscientious and honest efforts they have made to interpret that paragraph throughout the years, it having first appeared in similar form in the Tariff Act of 1922.

I understand and appreciate the difficulties which the Bureau of Customs has had in administering that paragraph.

This section 28 in this bill will do a great deal to clarify and to remove some of the administrative difficulties with which they have been faced. Therefore, while it is not exactly to our liking, nevertheless we endorse it in its present form and desire to cooperate with the Department in all ways and means possible to eliminate the difficulties which they have faced in administering the present law.

Senator WALSH. Very well, sir. Are there any other persons who desire to be heard today, who are prepared to go forward? If not, the subcommittee is adjourned to 10 o'clock tomorrow morning.

(Whereupon, at the hour of 12 m., the committee adjourned until 10 a. m. the following day, Wednesday, January 26, 1938.)

41551—38——3

CUSTOMS ADMINISTRATIVE ACT

WEDNESDAY, JANUARY 26, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in the Senate Finance Committee room, Senator David I. Walsh (chairman) presiding.

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

Senator VANDENBERG. Senator, I am unable to stay this morning because of my appearance at a meeting of the Commerce Committee, but I would like to call your attention to the fact that in addition to the sections which the Treasury Department discussed yesterday, there seems to be controversy with regard to section 19. I present for the record a communication on behalf of 325,000 railroad employees and citizens objecting to section 19. I would like to have that printed in the record and then it will be available to the Treasury Department for comment later on.

Senator WALSH. It will be printed in the record. I am sorry you cannot be with us this morning.

(The communication referred to is as follows:)

JANUARY 25, 1938.

Hon. ARTHUR H. VANDENBERG,
United States Senate, Washington, D. C.

DEAR SENATOR: Confirming our conference this afternoon on the provisions of section 19 of H. R. 8099, it is our opinion that this section should be opposed by the employees of all rail carriers from the international boundary at Detroit and Port Huron to the Northwest, as it has been purposely drafted to permit the caravaning of trucking or Canadian-built automobiles from the points above mentioned, through the United States and back into Canada, through the gateways of International Falls and Noyes, Minn., Portal, N. Dak., and Sweetwater, Mont. We understand this provision of the bill was proposed by Congressman Dingell of Detroit, at the instance of the owners of the Ambassador Bridge, extending between Detroit and Windsor.

There are some 450 carloads of automobiles per annum manufactured at Windsor and Tilbury, Ontario, which are sold in the Canadian Northwest, and which are at present handled by the American rail lines through the United States and back into Canada, via the ports above mentioned. The Canadian Pacific and the Canadian National Railways, of course, handle more of this traffic than do the American railroads. We are advised that the Canadian National Railways handled 2,401 carloads of automobiles and trucks from Windsor, Tilbury, Chatham, and Oshawa, Ontario, to points in Canada west of Port Arthur and Fort William in the year 1936, which movement was subnormal, and handled 2,028 carloads between the same points during the first 6 months of the year 1937.

We are also advised that the Canadian Pacific Railway Co. handled 3,005 carloads of automobiles and trucks from Windsor, Tilbury, and Oshawa, Ontario, to points in Canada west of Port Arthur and Fort William, in the year 1936, and handled 2,445 carloads between the same points during the first 6 months of the year 1937. This business, under the provisions of section 19 of H. R. 8099, could all be diverted to the highways via the United States.

The mileage from Detroit to the points of reentry into Canada above mentioned is as follows: To International Falls, 912 miles; to Noyes, 1,126 miles; to Portal, 1,370 miles; to Sweetwater, 1,907 miles.

The point I want to make clear is that the extensive use of American highways by this class of traffic will not benefit the American manufacturer or consumer. The provision is promulgated by a bridge company, owning a bridge some 2 miles in length, which desires to earn additional tolls thereon, and the result will be, if enacted, the use of some 1,000 to 2,000 miles of American highways for every 2 miles of bridge operation, additional loss of revenue to American as well as Canadian railroads, with a resultant reduction of railroad employment.

From the standpoint of the above, as well as a matter of safety on our Michigan highways, the Michigan Railroad Employees and Citizens League, with an approximate membership of 325,000 wish to file our opposition to section 10 of H. R. 8099.

Very sincerely yours,

FLOYD E. DRAKE,
Executive Secretary.

Senator WALSH. We will first hear from Mr. Lourie.

STATEMENT OF HARRY L. LOURIE, WASHINGTON, D. C., EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS, INC.

Senator WALSH. Your name is Harry L. Lourie?

Mr. LOURIE. Yes, sir.

Senator WALSH. You are here representing the National Association of Alcoholic Beverage Importers, Inc.?

Mr. LOURIE. Yes, sir, I am. This association is a nonprofit membership incorporated association, under the State of New York. It maintains its headquarters in Washington and comprises in its membership approximately 90 percent of all the imports of alcoholic beverages which come to the United States.

Senator WALSH. What sections of this bill are you interested in?

Mr. LOURIE. We are interested in the marking provision as set forth in section 304, and we are also interested in section 15 which deals with section 516 of the tariff act.

Senator WALSH. Section 3 and section 15?

Mr. LOURIE. Yes, sir.

Senator WALSH. Do you object to both of these sections?

Mr. LOURIE. No, sir.

Senator WALSH. Do you approve of both?

Mr. LOURIE. We approve of both. We have a slight amendment to offer with respect to the marking section. On page 5, line 7, we should like to have inserted the following phraseology: "Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin."

Mr. Chairman, the reason we make this request is because the import trade has recently concluded a case in the customs court which involved a novel proposition. It was brought by a domestic producer. It took some 2½ years to conduct the litigation and it tied up bonds in excess of $200,000,000. The case was brought up on this theory, that the bottles in which wines or spirits were placed for shipment to the United States should be marked with the country where the bottle was made. Under the ruling of the Secretary of the Treasury, wines and spirits being incapable of being marked themselves, he had ruled that the label appearing on the bottle should show where the wine or the spirit was produced. This case was

dragged through the customs court for 2½ years and the court finally decided in favor of the procedure followed by the Government.

The language we seek is designed to take care of those unusual cases where the goods are incapable of being marked and where the containers in which they arrive, that is the usual containers, in themselves may be subject to a duty. It happens that glass bottles are subject to a duty, as provided in schedule 8, at one-third of the rate which they would pay if imported empty. We feel that the usual cheap glass bottle in which wines and spirits come is not treated by the consumer as of any importance, he is interested in the contents, and where the bottle is of the ordinary glass, the ordinary shape, and the ordinary markings, we feel there should be no requirement that it be marked to show where it was made.

If the language which we suggest is adopted it means that the ordinary importations of wines and spirits will bear a label on the bottle showing exactly where the wines and spirits were produced, and there will be no necessity of the bottle itself showing where it was made.

Senator WALSH. Does the present law require the bottle to be marked showing the country of origin?

Mr. LOURIE. Only where the bottle comes in empty, and our suggestion does not cover that situation.

Senator WALSH. Where bottles are imported empty and sold I suppose, and distributed in America as empty bottles, there is a requirement that they should be marked?

Mr. LOURIE. Yes.

Senator WALSH. There is no requirement under the present law that bottles that contain liquids, medicines, and liquors, and other things, have to be marked?

Mr. LOURIE. That is correct.

Senator WALSH. Do you think that this proposed section 3 would require that?

Mr. LOURIE. As we read it the bottle might be required to be marked, because it, in itself, is a container, and yet this is an article specified by the tariff act.

Senator WALSH. Your amendment—the purpose of your amendment is to exclude bottles that are filled with liquor?

Mr. LOURIE. That is right.

Senator WALSH. And where they are mere containers for the purpose of holding the liquor that is the subject of the purchase that is marked right on the bottle?

Mr. LOURIE. Yes, sir.

Senator WALSH. Have you submitted this to the Treasury Department?

Mr. LOURIE. We have discussed that informally. I do not know whether or not they would accept this amendment.

Senator WALSH. You would like to have the committee consider it too?

Mr. LOURIE. I would like to have the committee consider it.

May I say with respect to section 15 on page 17, we are heartily in favor of the language proposed in this bill, and we favor the language because of the distressing circumstances the import trade found itself in with respect to the protest which I mentioned heretofore. For over 2½ years thousands of entries were held up from liquidation,

the bonds amounted to tremendous sums of money, and there was no penalty involved; it was not a case of classification of duties. The language proposed now would not interfere with the normal conduct of the import business but would change the practice after the courts had made their decision, and we believe this is a step forward in the right direction.

Now, Mr. Chairman, we have another amendment to offer, or a suggestion to be put in the proper place in this bill. There is an administrative paragraph in the tariff act, in schedule 8, known as paragraph 813, which provides:

> There shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits, except that when it shall appear to the collector of customs from the gauges return, verified by an affidavit by the importer to be filed within 5 days after the delivery of the merchandise, that a cask or package has been broken or otherwise injured in transit from a foreign port and as a result thereof a part of its contents, amounting to 10 percent or more of the total value of the contents of the said cask or package in its condition as exported, has been lost, allowance therefor may be made in the liquidation of the duties.

That paragraph has been the cause of a great deal of controversy because what it in effect amounts to is that the import trade in wines and spirits was continuously paying the tariff on goods which were never withdrawn from the customs custody.

Senator WALSH. The Treasury Department has not recommended any change in this question or section of the tariff law?

Mr. LOURIE. It is not included in this bill. We proposed a study of this paragraph before the ways and Means Committee. Since that time we have tried to determine the legislative history of that particular paragraph and its relationship to other imports. Unfortunately, we have been unable to find out the exact reasons why this was inserted in the tariff bill in the seventies, about 70 years ago. It first appeared in the tariff right after the Civil War. The reason, we understand, at that time was that there was considerable pilferage from goods destined for the United States. The manifests would show certain quantities of distilled spirits and wines when the goods were unladen that would not arrive in the customs' custody. That was apparently the main reason for this paragraph. A similar paragraph was inserted in the Tariff Act of 1870 and continued with the Tariff Act of 1930.

Senator WALSH. Now, will you give us a concrete instance of an alleged injustice under the section of the tariff act that you refer to?

Mr. LOURIE. I will give you a very concrete illustration. There are large quantities of spirits coming into the United States in cases usually packed a dozen bottles to the case. If during the course of the journey on a boat, or during the time it is unladen from the vessel and transported to the customs bonded warehouse, or in the handling in the customs bonded warehouse, one bottle should be broken in the case, that, unfortunately, is less than 10 percent and the importer must pay the full duty even though one bottle in each case was broken, because the law specifies there must be damage or loss of at least 10 percent. Furthermore, the law specifies that the importer must make his claim within 5 days. We find it is almost impossible to determine what the losses have been in such a short period, because it often happens that the casualty may be more while the goods are under the control of the Government.

For that reason we believe that the amendment that should be made in this paragraph is to take out the percentage limitation, which is 10 percent, and to give us a more reasonable time for making the claim.

Then the other point is with respect to goods which come here in barrels. Very large quantities of alcoholic beverages, particularly whisky, come down from Canada in barrels.

Senator WALSH. Pardon me. As a matter of practice, who makes the claim for damages? The importer when the shipment reaches destination?

Mr. LOURIE. Yes.

Senator WALSH. How is the Government going to be protected against damages that may occur from the dock to the customs office and to the importer or the place of final sale?

Mr. LOURIE. Mr. Chairman, that is not the problem. The way the goods are handled is this: Once the boat arrives in the United States the cargo is completely under the control of the customs officials. The importer arranges to have bonded trucks to move the cargo to a customs bonded warehouse.

Senator WALSH. Are they all inspected?

Mr. LOURIE. They are inspected.

Senator WALSH. Is every bottle in the contained inspected to see whether it is in perfect condition or not?

Mr. LOURIE. No; that would be a physical impossibility. The cases are, of course, closed.

Senator WALSH. Yes.

Mr. LOURIE. The way the losses are determined, there are two possible ways of determining losses: One is for the importer to have a person under his control at the dock, or at the customs bonded warehouse to examine the cases, as they come out of the boat or as they are loaded into the customs bonded warehouse, for evident leakage in the case.

Another way is to have the cases weighed for the gross weight and the tare, because the cases normally are rather uniform in weight and it is not difficult to determine by having the net weight of the case that there has been any breakage. If you take a quart of liquor, that usually, with the bottle itself, would weigh about 2½ pounds. So it is not impossible to determine it from the gross weight. But, as a matter of fact, Mr. Chairman, the gaging of imported spirits and wines which come in bottles is not performed in the same way as it is done in the case of wines and spirits which come in barrels. It is impossible for the gager to open up every case and determine the exact content of each case. It is usually done on a sampling proposition.

Senator WALSH. Now how is the Government protected against a person who imports from time to time a thousand bottles of cologne and when it comes to the point of destination, the person makes a claim that 10 percent or more of those bottles were damaged in transit? Does the Government send an inspector to see whether that is so or not, or does it rely upon the allegation of the consignee?

Mr. LOURIE. In the case of cologne, cologne does not come under this provision, cologne would be covered by another provision of the tariff act known as section 563, which provides that wherever merchandise has been damaged in transit or while in the customs custody, that the Secretary of the Treasury may allow a rebate of the duties collected on the proof of such damage.

Senator WALSH. Proof, then, is always made by the importer or consignee?

Mr. LOURIE. The importer usually has to make the claim, but it must be verified by the responsible Government official.

Senator WALSH. You are dealing only with the provision that deals with intoxicating liquors?

Mr. LOURIE. Yes. Liquor is the one exception to the general provisions with respect to damage to merchandise.

Senator WALSH. That is the only one that contains the 10-percent limitation?

Mr. LOURIE. Yes, sir.

Senator WALSH. What is your proposed amendment, Mr. Lourie?

Mr. LOURIE. First, I might explain that the importers of imported spirits pay two taxes. They pay a duty and the excise tax. Under the ruling of the Internal Revenue Department imported spirits and wines pay the internal revenue tax only on the quantities which are actually withdrawn from customs custody and go into consumption. That, of course, is not true in the case of the duties.

We have proposed that the paragraph be rewritten to read as follows:

> The duties prescribed in schedule 8 and imposed by title 1 shall be collected only on the quantities of alcoholic beverages actually withdrawn from customs custody, such quantities to be determined by a regage performed at the time of withdrawal.

In the case of spirits that come here in barrels, which go in the customs custody, the importers have no control whatsoever over the merchandise. They stay in the customs custody anywhere from a day to perhaps up to 3 years, depending on the warehousing period. During that time losses do occur, barrels may leak, there may be evaporation. We pay the internal revenue tax on the actual quantity that is withdrawn, and yet we are continually paying the duties on the quantities which do not enter the consumption of the beverages in the United States.

We have thought that there may be one solution, and that is allowing for imported spirits the same quantities for evaporation and loss as is allowed in the case of a distiller's bonded warehouse for whisky stored in the United States under the control of the Government. Those allowances are shown in Public, No. 815, of the Seventy-fourth Congress, and the allowances run from an allowance on a 40-gallon barrel of one-proof gallon for a storage period of 2 months, up until it covers the full storage period. We think if that sort of allowances would be permitted on imported goods we would be in the same position as other handlers of distilled spirits.

We do feel that the present language of the tariff act is unfair because we are continually paying duties on goods that do not arrive in the United States.

Senator WALSH. Will the Treasury Department take note of this request and at a later time give the committee its views?

Mr. SPINGARN. We will be glad to do that.

Senator WALSH. Mr. Levett.

STATEMENT OF B. A. LEVETT, NEW YORK CITY, CHAIRMAN, COMMITTEE ON CUSTOMS ADMINISTRATIVE PROCEDURE, MERCHANTS ASSOCIATION OF NEW YOEK

Senator WALSH. Your name is B. A. Levett, of New York City?

Mr. LEVETT. Yes, sir.

Senator WALSH. You are representing the committee on customs administrative procedure, Merchants Association of New York?

Mr. LEVETT. I am chairman of that committee, Mr. Chairman, and I represent the merchants association because our committee made recommendations on the bill to the board of directors and they have approved it.

Senator WALSH. Are you an attorney?

Mr. LEVETT. I am an attorney, and I have been in the customs practice from the time I was with Senator Aldrich in 1897, who was on the Senate Finance committee, and I have been Government attorney for awhile. I am practicing outside now, but I have been devoting my time entirely on tariff matters, and even went so far as to write a book on customs administration.

I might say, in starting, that the merchants association has never had any interest in tariff rates. We have more American manufacturers in our association than importers, but we have felt ever since 1890, when Mr. McKinley asked us to make comments on his bill, that it is proper to give our views, always having in mind the Government, the domestic manufacturer, and the importer. So we are absolutely neutral.

Senator WALSH. What section are you particularly interested in?

Mr. LEVETT. We have gone through the whole bill and we have filed a brief with the Ways and Means Committee which I hope you gentlemen will take into consideration and which will save a lot of time here.

Senator WALSH. And that is set forth in the hearing before the Ways and Means Committee?

Mr. LEVETT. Yes, and I personally appeared. We went through the whole bill and made recommendations and suggestions and some criticisms. Some of those criticisms have been accepted and there have been some changes made which were in accordance with our views. But there are still some things in here, Mr. Chairman, that I would like to talk about, and if you will permit me I will go right from the start. It will not be many sections.

Senator WALSH. Well, you may take them up section by section, so we can later analyze them more conveniently.

Mr. LEVETT. Exactly. First we will take up the section on marking.

Senator WALSH. That is section 3?

Mr. LEVETT. Section 3. On the whole we have very little to say against that, but there are one or two little things there which I would like to refer to.

In subparagraph (2) of paragraph (a), down at the end of the subparagraph (2), the last line, it states:

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

I do not see very much harm in that, but it seems to indicate that the Treasury Department could follow an imported article into a manufactured American article and require the marking. If that is the intent I think it is perhaps beyond the power of the Treasury Department and should be deleted.

Then in subparagraph (*f*) of paragraph (3), I refer to the language "such article is imported for use by the importer and not intended for sale in its imported or any other form." That would seem to follow an imported article into the commerce of the United States after it has been manipulated or manufactured in the United States. I think that should be clarified.

Now, when we come to page 6, paragraph (d), "delivery withheld until marked," as you undoubtedly know, Mr. Chairman, of course when the goods are imported, certain of the goods, at least 10 percent have to go up to what is called the appraiser's stores to be examined both as to classification, quantity, and everything else. This provides that the case, the public store case, as it is called, may not be delivered "until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section."

Now, it generally happens this way: One-tenth of the goods will go to the appraiser's stores and the other nine-tenths will be delivered to the importer. It is quite in order, of course, that they should all be marked, but sometimes it is impossible to get back the cases that have been delivered, because the importer does not know at the time of importation whether they have all been properly marked, and it is frequently the case that goods are shipped right from the dock out of town to different customers, immediately opened and placed on the shelves, so at times it may be absolutely impossible to get these back. Under the language of this provision the appraiser's packages could not be delivered even though it might be impossible to mark those that have been delivered.

So I think the Treasury Department will probably accept an amendment, as it is stated here, that no imported article held in customs custody for inspection, examination, and so forth, which is the appraiser's package, shall be delivered unless all of the goods have been marked, or unless the importer has deposited the 10 percent extra duty which would apply in that case. I am inclined to think that an amendment something of that sort will be acceptable.

Then under (*e*) there is a penalty of $5,000 or imprisonment for 1 year, or both, for removing the mark or defacing it and so on, which I have little to say about, except I think the punishment is a little too much for the crime. But under section 21——

Senator WALSH (interposing). Now, you have finished with section 3?

Mr. LEVETT. No; I am taking up section 21 in connection with section 3, because section 21 applies to it.

In section 21—that is the old section 21 which has now been changed to section 22—it is provided in section 22:

No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

That is as to the marking. The proposed bill provides that if these goods have been marked or exported then the 10 percent shall not apply, but they also provide in section 22 that the regular duty shall not be refunded if these goods are exported.

Now the situation is this: The goods may come in and some of them be delivered, the importer would not mark them and decide to export them to avoid the 10 percent marking duty, but under this section he can save his 10 percent marking duty, but he cannot get back his regular duties.

Senator WALSH. If some of the imported goods reach a consumer and are lost from identification, duty having been paid upon them, and the Government finds afterwards that they were not properly marked, the importer is not in a position to send them back, what happens then?

Mr. LEVETT. Then he has to pay the 10 percent duties.

Senator WALSH. There is no provision for him to receive a rebate for the money paid?

Mr. LEVETT. Exactly.

Senator WALSH. Even if he ships them back?

Mr. LEVETT. Even if he ships them back, but under section 3, if they come in their original packages, they have not been opened or anything of that sort, and then export them, he saves his 10 percent, but if he exports them in that condition, never having opened them, never having used them, he cannot get his regular duties back. It is under the general provision that no duties shall be refunded after the goods have left the customs custody, but it seems to me there should be an exception in this case.

Senator WALSH. Do you know of any circumstances such as that? Do they occur very often?

Mr. LEVETT. Whether it does or not, in the present law it does not make any difference what happened once the goods have left the customs custody. Whether you export them in the condition they come in or not, you cannot get your duty back once they have left the customs custody. This bill is more liberal now. It says if they are in that condition and are exported the marking duty can be saved, but it does not let them save the regular duty, and it seems to me that the refund of the regular duties would be a very reasonable proposition.

Senator WALSH. There is always, of course, the opportunity to send a claim in.

Mr. LEVETT. Not for refund of duty after they have left the customs custody.

Senator WALSH. The Congress, of course, can make an exception in a particular case under special circumstances, it can pass a special bill for that purpose, where there was an apparent injustice, notwithstanding the strict letter of the law.

Mr. LEVETT. Yes. We propose an amendment something to this effect, that when the goods are exported for the reason that they are not marked not only shall the 10 percent be remitted or waived, but the regular duties may be refunded.

Of course, all this has got to be done under Government inspection, so the Government is protected there.

Now, in section 8, there is a little point there that I would like to bring to your attention. This provides for extra labor on the part of the officials. It says:

Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees if available to perform any such services.

That is a little changed from the old law, but the only point I want to call your attention to are the words "on behalf of the owner or consignee of any merchandise or baggage." It seems to me that that is opening the door. Any passenger coming in would fall within this provision, and he, if the customs does not feel like going right ahead, can demand that the customs appoint employees to work overtime. A single passenger can do that. It seems to me that ought to be changed a little bit.

Senator WALSH. You think this would make it mandatory?

Mr. LEVETT. Yes. It says, "upon request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees to perform any such services which may lawfully be performed by them," and so forth, and shall pay the expense of it.

Senator WALSH. Does the Treasury Department agree that that is mandatory?

Mr. JOHNSON (Mr. W. R. Johnson, Chief Counsel, Bureau of Customs, Treasury Department): Mr. Levett jumped two words in reading that which appear on line 4 page 11, "if available." It states, "the collector shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed."

Mr. LEVETT. Yes.

Mr. JOHNSON. There are occasions when an individual passenger will request and pay for special services at nights, Sundays, or holidays, particularly at railway terminals when a transfer is being made, and we see no objection to allowing that service if the employees are available without prejudice to the service.

Mr. LEVETT. With that explanation I see that there is not so much in my point.

Senator WALSH. Very well. Proceed with the next.

Mr. LEVETT. I will next take up section 12. Under the present law any merchandise which has been entered, that is to say, where you have gone to the customhouse and made your entry, you either pay the estimated duty, or enter them for bonded warehouse, from which they may afterwards be withdrawn on payment of the duty. But if goods come in and they are not entered at the customhouse the Government takes charge of them and puts them in the warehouse which is called the general order warehouse, and then within a limited time the importer has the right to make entry. The present law provides that where goods were not entered and remain in custody for a certain time without the duties, storage, and other charges having been paid, they are then taken charge of by the Government and sold, which is quite all right. But there is an attempt to amend this by

saying, "any *entered* or unentered merchandise." It seems to me the word "entered" was inadvertently put in there, because when merchandise is entered it is right in the control of the Government and the estimated duties are paid, or secured to be paid. A literal interpretation of this provision, as I see it, would mean that where goods are in the appraiser's stores for examination and sometimes the examination, or at least the passing of the invoice by the appraiser, does not take place for 2 or 3 years and if the additional duties are not paid, it would seem that this would then give the Government the right to seize those goods and sell them. I do not think that is the intent.

Senator WALSH. Does the word "entered" include payment of the duties?

Mr. LEVETT. It either means payment of the estimated duties at the time you put the papers into the customhouse, which is called "entered," or you put your goods in the warehouse.

Senator WALSH. Could they make entry by claiming that the goods belonged to them and that they some time later would remove them and pay the duties and then neglect to do it?

Mr. LEVETT. No; the law takes care of that.

Senator WALSH. Entry includes paying the duties and everything else?

Mr. LEVETT. We have an entry for consumption. That is to say, when you take your goods right out of the customs custody and then you pay the estimated duties. We also have an entry for a warehouse, where we say to the collector, "We want these put into a bonded warehouse and we will give a bond for the payment of the duties when we take them out of the warehouse." So the Government is secured there. In either case those are what are called entered goods. When goods are not entered it means nothing is done about them, and the collector holds them for a given time and sends them to the warehouse, called General Order Warehouse.

Senator WALSH. Where either one of those methods of entry would take place, the Government would be out of the goods upon the removal of the goods?

Mr. LEVETT. That is all provided for in another section of the law. When goods are in a bonded warehouse, after having been entered, for over 3 years, without being taken out, then the Government can take hold of them and sell them.

Senator WALSH. The point you make is that the "entered" in this section appears to be unnecessary and dangerous?

Mr. LEVETT. Yes.

Senator WALSH. And that was not intended in cases of entry?

Mr. LEVETT. Yes; unless Mr. Johnson could give me as good an explanation as he did on the last point.

Mr. JOHNSON. We have had a situation where entry had been filed for consumption, not for warehousing, but the entry had not been completed by the payment of estimated duties. The language of the proposed amendment is expressly limited in the case of entered merchandise to entered merchandise upon which the estimated duties have not been paid. It reads:

Any entered or unentered merchandise (except merchandise entered under section 557 of this act, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for 1 year from the

date of importation thereof, without all estimated duties and storage or other charges thereon having been paid.

Mr. LEVETT. Mr. Johnson, would you consider as estimated duties a case like this, where goods are entered, the estimated duty paid based upon the value at which they are entered, and the appraiser then holds them up; he is going to advance them but he does not know just how much, and he tells the collector to require a deposit. Would you consider that as estimated duties?

Mr. JOHNSON. I would not consider a deposit to be estimated duties unless they are estimated in a fixed amount.

Mr. LEVETT. If you include that in the estimated duties then the danger of this thing comes in. If it is only the original estimated duties then of course there is no danger, but it is a question whether the demand for a deposit to cover a possible advance might also be considered estimated duties, and then it would bring it back in here, don't you see. I think it ought to be cleared up, it should be clarified to make it definite as to what is understood by "estimated duties."

Mr. JOHNSON. There is a point of possible difference between Mr. Levett and the Treasury Department in the case of merchandise which has been entered and the appropriate estimated duties paid. The appraiser then determines the possibility of an advance in value, which would require further estimated duties to be paid. Now, whether those estimated duties should be required to be paid promptly is a question of policy that we would like an opportunity to report upon.

Senator WALSH. Mr. Levett submits those observations to the Treasury for their sympathetic consideration. What other sections do you wish to discuss?

Mr. LEVETT. On page 15, section 14, that, to me, is very objectionable. At the end there it says:

No appraisement shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination, or, if designated, was not actually examined, unless the party claiming such invalidity shall establish that merchandise in the packages or quantities not designated for examination, or not actually examined, was different from that actually examined and that the difference was such as to establish the incorrectness of the appraiser's return of value; and then only as to the merchandise for which the value returned by the appraiser is shown to be incorrect.

That we do not object so much to, because it is quite in order that the Bureau of Customs or the Secretary of the Treasury might require in large shipments less than 10 percent, but we come a little further as to the appeal, when the appraiser advances the dutiable value of goods the importer has a right to appeal to the customs court, to one of the judges, and from him appeal lies to three of those judges, and then if a question of law is involved there is a further appeal allowed to the United States Court of Customs and Patent Appeals in Washington.

Now, this goes on to tell what must happen:

Every such appeal shall be transmitted with the entry and the accompanying papers by the collectors to the United States Customs Court and shall be assigned to one of the judges, who shall in every case, after affording the parties an opportunity to be heard on the merits, determine the value of the merchandise from the evidence in the entry record and that adduced at the hearing. Appraising and examining officers shall be competent to testify at the hearing as to facts within their knowledge or obtained from records and memoranda made in the office of the appraiser with respect to the merchandise under consideration, or

like or similar merchandise, and as to conclusions reached by them in the course of their official duties concerning the merchandise notwithstanding that the original appraisement may for any reason be held invalid or void and that the merchandise or samples thereof be not available for reexamination.

This gives the right to the appraiser, you might say, to go all around Robin Hood's barn and use any information he has, whether it especially applies to this merchandise or not, and let him testify as to what he might think was similar merchandise when none of the merchandise is before the court to test his judgment.

Then when we come to (c):

If in the final determination of a protest, the appraisement of merchandise is found to have been invalid, the proper dutiable value of such merchandise shall be determined by the United States Customs Court in the manner provided for by this section.

Now, Mr. Chairman, from the beginning of this Government it has been held that if an appraiser does not have the goods before him when he makes his return of value the appraisement is invalid and void, not even voidable but it is void, and in that case of course it has been held that the appellate court has no jurisdiction, because there is nothing to appeal from. This amendment would seem to indicate that although there is a void decision of an administrative officer, yet an appeal might lie to a judge who does not have the goods, who has nothing before him, and then he has to appraise the merchandise. It seems to me it is contrary to all theories of law.

Senator WALSH. You claim that if an administrative officer makes a finding of invalidity the Government ought to be bound by that and there ought to be no appeal?

Mr. LEVETT. If he makes a void decision as to fact, and it is so held by the court, certainly the court should not be called upon to find that fact.

Senator WALSH. Suppose the officer is negligent or has acted fraudulently, what then?

Mr. LEVETT. Well, in a case of that sort—I cannot conceive that in connection with this. The usual reason why an appraisement has been held invalid is because the appraiser has not had before him the particular kind of merchandise that he finds a value for

Senator WALSH. Is it possible that he could have it before him and yet make an entry of that kind?

Mr. LEVETT. The records would show whether he had it before him.

Senator WALSH. I am just inquiring.

Mr. LEVETT. There is a record made of the cases which are sent to the appraiser. He is presumed then to have looked at the goods, whether he does or not, and no one is foolish enough to say that he did not look at them. The fact is they are there in that case, and the invoice shows the contents of that case.

To illustrate just what I mean, some years ago there was a case that arose where there were many different kinds of brushes imported, tooth brushes in one case and hair brushes in the other. The appraiser advanced the tooth brushes although he never saw them on the basis of having looked at the hair brushes. His action was held to be void.

The evident purpose of this amendment is due to the fact that the law required 10 percent of the goods to be sent to the examiner for examination. Some of these importers, when less than 10 percent was set, raised the objection that the law had not been complied with,

and in a case of that sort the appraisement was held void. Now, there is no reason why the Secretary should not have the right to order in all that he wants, or a lesser quantity than 10 percent, and in that respect this amendment is good, but when they say that if an appraisement is held to be void by a judge, that you must take the case to that judge himself to find the value and act as an appraiser, I think it is going too far. In other words, he may hold for any reason that the original appraisement was void, but then he must be the appraiser without the goods, without the examination, merely on the say so of this man. And bear in mind that the appraising of the goods may be the value of that class of goods, such goods or similar goods, and there would be a lot of hearsay testimony as to whether this was similar or that was similar, with no samples to compare the goods with.

Senator WALSH. Will the Treasury Department take note of these observations?

Mr. JOHNSON. Yes, sir.

Senator WALSH. Take up the next section.

Mr. LEVETT. Now, we come to section 18 on page 23, "Taxes not to be construed as duties." It has been held from the beginning of time by the Supreme Court, and right down through the lower courts, that any tax levied upon an imported article before it enters into the commerce of this country is a duty. I think you are familiar with those decisions. This proposes that nothing shall be considered a duty unless it is so specified in the act. In other words, as I read it, although the Treasury Department differs with me a little bit, as I read this this would take away the jurisdiction of the customs court of appeals from passing upon any case of imported merchandise where the tax is not referred to in the law as a duty, specifically the internal revenue taxes.

In talking with Mr. Johnson about this, as I understand his point, he says it does not take away the jurisdiction, because if these internal-revenue taxes are not mentioned as duties, nevertheless they are exactions, and the court has jurisdiction on exactions as well as duties. My reply to that is that the Supreme Court had held in *Homer* v. *The Collector*, in 1 Wallace—I have forgotten the page—that where an article has been in the tariff act by name specifically, such as almonds, and there is another provision for nuts, and they omitted the word "almonds" in one of the acts, the Supreme Court held it could not come into the classification of nuts, because the lawmakers having once differentiated between them it would not fall back into the class in which it belonged. So that I say this, that all through these years there being a differentiation between "duties" and "exactions," even though an internal revenue tax may be an exaction, nevertheless as it has always been considered a duty, and if it is now left out of the duties, it would not come into the exactions and therefore the customs court would have no jurisdiction.

It has been the policy of this Government for many years to have one tribunal pass on these cases covering imports. I think, and in fact I feel sure that would be bad in that it would take away the jurisdiction of the courts and cause us to go to different courts on the same importation, one as to the internal revenue, which is a duty, and the other on what is conceded to be duties.

Senator WALSH. Mr. Johnson, have you a different construction than Mr. Levett on this section?

Mr. JOHNSON. Yes. As Mr. Levett says, the Customs Court and the Court of Customs and Patent Appeals have held that they have jurisdiction over questions involving the internal revenue laws in their application to imports. They have cited the Supreme Court decisions as authority for the fact that all charges on imports collected while the goods are in the customs custody are duties. In recent cases, or in a recent case particularly, an internal revenue tax was held to be a duty for the purpose of an exemption provided in the tariff law that had never before been construed to apply to an internal revenue tax. That case has very serious implications and this section is aimed to overrule that case. It is not aimed at the jurisdiction of the court.

Senator WALSH. Well, a provision could be inserted ito indicate that this section was not intended to remove an old jurisdiction or some jurisdiction that the courts took under the old cases.

Mr. JOHNSON. The Treasury Department believes that this proposed language would not affect the question of jurisdiction, but it would be glad to consider any such saving language.

Mr. LEVETT. Yes. If there could be some saving language there we would have no complaint at all. I recall the case that Mr. Johnson referred to.

Senator WALSH. What you are suggesting is that in the desire or effort of the Treasury Department to overrule this particular case cited you fear it may reach into a larger field?

Mr. LEVETT. Exactly, and I might say that is the opinion of practically every attorney I have talked with.

Senator WALSH. Take a note of that, Mr. Johnson.

Mr. JOHNSON. Yes, sir.

Mr. LEVETT. Mr. Johnson, could not you draw a saving clause covering that particular case?

Mr. JOHNSON. This language, of course, is our draft to accomplish just that thing.

Senator WALSH. Without attempting to disturb the old order and practice?

Mr. JOHNSON. Yes.

Senator WALSH. You have drawn definite language with that in mind?

Mr. JOHNSON. Yes, sir. We believe we have accomplished that. We will be glad to consider any suggestions.

Senator WALSH. Your next section is what?

Mr. LEVETT. Section 26, which is a proposed change in the old section 613, a change of the phraseology. It relates to the disposition of the proceeds from the sale of customs seizures. Under the law when goods are seized for fraud, or any other reason, the value is collected if the goods have disappeared, and that value is the value of the goods plus the duty. That has always been considered as the forfeiture value. In this amendment as proposed it not only provides for the forfeiture of the value of the goods plus the duty, but is worded in such a way that the importer would still be liable for the duty after his goods have been seized. In other words, he would have to pay the duty twice. That is the way I read that, Mr. Johnson. Don't you?

Mr. JOHNSON. That is the law today—*Meredith* v. *United States* (13 Peters 486).

Mr. LEVETT. It is bad law and should be changed. I think when a man is punished by having his goods taken from him, including the duty, he should not be mulcted for the duty.

Senator WALSH. You object to the intent and purpose of that paragraph?

Mr. LEVETT. Yes. Mr. Johnson says it is still in the present law. If that is so, it should be changed, even if it is in the present law.

Senator WALSH. Are there any other sections?

Mr. LEVETT. No; that practically covers it, but I would again ask your committee to carefully consider our brief filed with the Ways and Means Committee covering other sections.

Senator WALSH. You may come back and present any further testimony that occurs to you after we hear the other witnesses.

Mr. Kraemer.

STATEMENT OF FREDERICK L. KRAEMER, NEW YORK CITY, REPRESENTING THE NEW YORK CUSTOMS BROKERS' ASSOCIATION

Senator WALSH. Your name is Frederick L. Kraemer?

Mr. KRAEMER. Yes, sir.

Senator WALSH. Your residence is New York City?

Mr. KRAEMER. Yes, sir.

Senator WALSH. And you are here representing the New York Customs Brokers' Association?

Mr. KRAEMER. Yes, sir.

Senator WALSH. Mr. Kraemer, what particular sections of this bill do you desire to comment upon?

Mr. KRAEMER. Mr. Chairman, our association endorses the bill in general. I might say this, that I have a statement here and if time does not permit me to read it, I would be just as well pleased to file it.

Senator WALSH. Is it a statement of general approval?

Mr. KRAEMER. It is also citing the reasons.

Senator WALSH. For your approval for these changes?

Mr. KRAEMER. Yes.

Senator WALSH. Does the statement contain any suggestions as to modifications or changes in the law?

Mr. KRAEMER. No; it endorses the proposed law.

Senator WALSH. It would save our time if you would be willing to file it.

Mr. KRAEMER. I would be willing to file it. Our association is only interested in three sections of the proposed law. That is the marking act and the proposed section 15, which is the section that amends the filing of producers' protests.

In our business we believe, and know for a fact, that there is also some administrative difficulty in holding up and suspending some 20,000 or 30,000 entries on a producer's protest and then have them suddenly released on a court's decision, so as to practically flood the liquidating department in New York with entries which may take years to liquidate.

Senator WALSH. There seems to be unanimity of opinion on the question that those two sections under existing law have led to a good deal of difficulties, misunderstandings, and perhaps injustices, and that the change recommended by the Treasury is desirable in every way.

Mr. KRAEMER. There is one more section, a very important section, and that is the proposed section 20 amending section 557. There, Mr. Chairman, we have a law that permits an importer to put in bond merchandise. I know of a number of cases that are going to crop up on account of the consignee or importer of record who, after he had sold his goods in bond, was called upon to protect himself because the purchaser or transferee did not pay the duty or export the goods in the statutory period of 3 years. It is, I think, purely a legal question between the consignee and the purchaser of goods in bond, but I know of cases where the purchaser of goods in bond, the transferee, would be happy and willing to accept the obligation of the original consignee and release the bond given, if he was permitted to do so.

It is almost a paradoxical situation, for this reason, that if a consignee sells his goods in bond to you or to me, and we pay the duty, which may be an excessive duty, our own money is refunded to the original consignee who no longer owns the goods. I know of cases where the original consignee has issued negotiable warehouse receipts to the purchaser or the transferee, and yet he has got to go to the extreme measure of abandoning these goods in 3 years, because in that time the goods have more or less probably deteriorated and they are not as salable as they were.

Senator WALSH. Would you like to have the representatives of the Treasury give further study to this particular section?

Mr. KRAEMER. No, I think the Secretary of the Treasury has covered it completely.

Senator WALSH. Do you think the difficulty that has been experienced in the past is corrected by the language in this section?

Mr. KRAEMER. Yes, sir.

Senator WALSH. I appreciate your filing your brief, Mr. Kraemer.

(The brief referred to is as follows:)

My name is Frederick L. Kraemer. I am vice president of the New York Customs Brokers Association, which I represent. I am here to urge the enactment of H. R. 8099. We believe that the proposed amendments, covered in this bill, are necessary to correct and modify certain sections of the present administrative act, which are drastic, somewhat ambiguous and responsible for considerable confusion in administrating customs laws.

Customs brokers are employed by American manufacturers and importers to prepare necessary documents and to pay the estimated duties so as to expedite the release of imported merchandise. We must have a knowledge of the administrative laws so that we can give our clients the proper advice. The recommendations we wish to make are without bias or personal interest. We will criticize a few of the most important sections of the administrative law as they now stand.

Let us begin with section 304. We have experienced considerable difficulty working under this section. It is true that the law has been in existence over 7 years; and it is equally true that the foreign shippers are frequently violating this law. The courts have construed it, in such a technical manner, that it is robbed of its clarity. It must be understood that the foreign exporter, in most cases, is not familiar with the English language, and he can only be advised by letter how to mark his goods. Over 50 percent of the total importations are free, crude, raw materials which are packed in containers such as bags, bales, sacks, boxes, barrels, and drums, which are imported by the American manufacturers and importers, and are not sold to the consumer in the original containers.

The law compels the Secretary of the Treasury to promulgate regulations to enforce the marking of such containers whether their contents be free or not, notwithstanding that they never reach the consumers in the condition as imported. The proposed amendment under section 304, under subsection A and subdivision B will remedy this condition and meet with wide approbation from all those interested in such importations. There certainly should be no objection to the

enactment of this proposed amendment, which will benefit both the American manufacturers and importers.

The free, crude, raw materials are gathered by primitive people in the most remote parts of the world, who know very little about the official English name of their government. Their failure, in the past 7 years, to carry out the proper marking requirements has resulted in heavy penalties to innocent importers. The technical rulings, compelling the name of the official government of a country as proper marking, become rather perplexing when shipments are exported from islands, possessions, and mandated countries from which our raw materials generally flow. These technical requirements are difficult to transmit by letter to exporters. Many violations have occurred and still continue to occur from day to day.

To illustrate, I recall a case of a recent shipment of salt, in bags, which was marked, "Turks Island." An assessment of 10 percent marking duty was levied, because "Turks Island" was a violation of the marking act. The correct marking should have been "British West Indies." A recent shipment of crude rubber, marked, "P. of B. Malaya" was also held up until the bags were marked "Product of British Malaya," at the expense of the importer, together with the 10 percent assessment of the marking duty. None of this merchandise was delivered to the consumers as it required further processing by the manufacturer. I could quote many other ridiculous rulings if time permitted.

A cursory examination of the weekly Treasury decisions will reveal the fact that there is more marking litigation than any other customs litigation. There seems to be no diminution of such cases. For that reason, we urge, that the amendment be adopted. It will reduce customs litigation, and save the American manufacturers and importers heavy penalties. The proposed amendment, if enacted, does not rob the marking act of its teeth. It will require all competitive finished articles, which reach the consumer, to be marked, in a proper manner to indicate the country of origin.

Customs brokers believe that section 15, the proposed amendment to section 516, should be enacted, because the present section 516 has created considerable administrative difficulties. It has also placed a heavy burden on the importers, who are desirous of having entries liquidated promptly. The mechanics of filing a customs entry and paying the estimated duty does not complete the job. After payment of the estimated duty, the appraiser receives the invoice, appraises, and examines the merchandise. He reports his findings to the collector. The merchandise may also be subject to weighing, measuring, or gaging by other departments. When this work is completed a final report is made to the liquidating department. The importer may also be required to furnish additional information, affidavits, and other data, so that the entry can be properly liquidated. Under section 516, the moment the producer files a complaint and lodges a protest on a promptly liquidated entry, all entries made subsequently are suspended from liquidation. They are placed in a file where they remain for years until the litigation, concerning the correct foreign market value or correct classification, is concluded. The proposed amendment does away with this confusion and delay by not suspending the liquidation of entries until the court renders a decision. This, in our minds, will relieve administrative difficulties in liquidating entries 2 or 3 years after the original importation. It must be understood that, when an entry is filed and the estimated duty is paid, the correct assessment is not made until the entry is liquidated. The importer should be entitled to a prompt liquidation, so that he may know where he stands, regarding the cost of his merchandise. The sudden release of thousands of entries for liquidation purposes naturally slows up the liquidation of those entries, which are not involved. For the reasons we state, we believe that the proposed amendment should be enacted, as it will assure an orderly process of customs procedure.

We are in accord with section 20 of the proposed amendment to section 557 of the present act. The proposed amendment recognizes the inconsistency in the law as it now stands. The present law does not permit an importer to transfer the obligation to pay the duty or export the goods within the statutory period of 3 years, notwithstanding the importer sells his goods, in bond, and signs a transfer. The purchaser or transferee is denied the right to assume the obligations of the original importer. This section now compels the collector of customs to recognize the importer of record. Excessive duty paid by the purchaser or transferee is refunded to the importer of record. This condition has retarded the sale of goods in bond. The proposed amendment will protect the purchaser or transferee so that he may have all the rights provided for in section 557 and 563. There are many cases now pending where the consignees will abandon and surrender, to the Government, bonded goods which no longer belong to him. This will bring about

considerable litigation between the orginal importers and the purchasers of bonded goods.

We have cited these particular sections because they are outstanding in their drastic effects on our commerce. Heavy penalties have been assessed and much confusion and delay caused. This will be greatly obviated if the proposed bill H. R. 8099 becomes a law. We do not wish to take up more of your valuable time, but we believe that all the proposed amendments have considerable merit and will have a tendency to build up our foreign commerce.

The bill, if enacted, will diminish litigation. It will modernize antiquated laws that are found in some of the sections of our present tariff act. It will clarify others which will be helpful to business in general and satisfactory to both the Treasury and the American manufacturers and importers.

Senator WALSH. Let the next witness come forward, please.

STATEMENT OF ALFRED E. ROSENHIRSCH, REPRESENTING H. ROSENHIRSCH CO., NEW YORK CITY

Senator WALSH. Your name is Alfred E. Rosenhirsch.

Mr. ROSENHIRSCH. Yes, sir.

Senator WALSH. And your residence is New York City?

Mr. ROSENHIRSCH. That is right.

Senator WALSH. You are representing here H. Rosenhirsch Co.?

Mr. ROSENHIRSCH. That is right.

Senator WALSH. Will you tell us what the H. Rosenhirsch Co. is?

Mr. ROSENHIRSCH. The H. Rosenhirsch Co. is an importer of bristles.

Senator WALSH. Of what?

Mr. ROSENHIRSCH. Of bristles.

Senator WALSH. Do you desire to call the committee's attention to any particular section of this bill?

Mr. ROSENHIRSCH. Yes, to section 3 amending section 304, with particular reference first to subdivision (*c*) and then to the other subdivisions of that section.

Senator WALSH. Your presentation is confined entirely to section 3?

Mr. ROSENHIRSCH. That is right.

Senator WALSH. We will be pleased to hear you.

Mr. ROSENHIRSCH. Although my presence here is on behalf of my own firm, I have discussed this matter with most of the largest bristle importers in this country and they agree heartily with what I have to say.

In the first place, we all desire to go on record in favor of the proposed amendment to section 304, subdivision (*c*). We believe that the provision granting permission to mark containers after importation, if accomplished under customs supervision prior to liquidation of the customs entry, is highly commendable, but that it only solves part of the difficulty.

Let me illustrate. For many years the Soviet Government has been marking its cases and wrappers with the legend "origin Siberia, U. S. S. R.," and the name of the Soviet Government's bristle trust, "Rasnoexport." I have several samples here to show you. I will show you these afterward. These marks were accepted by the customs examiners in New York as satisfactory. Then commencing in September 1936, the examiners started to reject the markings as improper. Meanwhile two shipments totaling in value over $10,000 arrived in New York. In accordance with our practice of many years, we notified our customs broker to effect immediate delivery on most cases to our

customers. This was done without knowing about the change in practice of the Customs Bureau and examiners, and naturally without our knowing of any improper markings. The examiners then found that the above markings were improper, and because we were unable to redeliver the cases so that the word "Russia" could be painted on the cases, we were assessed damages in a sum over $3,000 and additional duties of 10 percent of the value of the merchandise.

One other illustration. About 6 weeks ago we received a shipment of over 100 cases of Chinese bristles valued at $32,000, bearing thereon the marking "Tsingtao." True, the word "China" should have been there instead, should have been painted on these cases. The examiner knew that Tsingtao was the name of a Chinese city. So did we. We explained that the whole mistake was caused by the turmoil of the war now going on in China. Nothing could be done for us, however, and the Bureau was about to place marking penalties of 10 percent against us. So we sold the merchandise in London at a loss and exported the cases to England where such markings are disregarded, where they do not require such markings.

Senator WALSH. Mr. Lockett, this appears to be a more exacting and serious case than yours.

Mr. LOCKETT (Mr. Joseph F. Lockett, Boston, Mass.): I am sorry. I was reading here and I did not hear the witness' statement.

Senator WALSH. The action of the Treasury in this case here, where a package was marked "Tsingtao" and not "China," the customs department contended that "Tsingtao" did not correspond to China.

Mr. ROSENHIRSCH. That is the inner wrapper of the merchandise. The outer cases were marked the same way. [Indicating.]

Mr. LOCKETT. Yes, that is serious.

Senator WALSH. So your difficulty is going to be, if you get a rebate there will be other cases similar to yours, where there were greater injustices, which would be entitled to rebates.

Mr. LOCKETT. Exactly. I am not asking for, as I suggested yesterday, any legislation which would give a remedy in my particular case that would not apply to all cases pending before the Treasury Department and the customs court, because I readily recognize there are many such injustices and I think they should be corrected. This bill, if it becomes a law, will correct in the future many of those injustices.

Senator WALSH. We have difficulty in drawing the line between the cases where there was clearly no intent to mislead or to fail to name the country of origin and those cases where there may have been an attempt to mislead.

Mr. LOCKETT. Yes; but you see, Senator, in my case, as in practically all other marking cases, they are marked with the country of origin, namely, Argentine in English words, in my case, before withdrawal from customs custody, but by operation of section 304, the Department had assessed the marking duty of 10 percent even though when they go into consumption they are marked with the name of the country as required by the law.

Senator WALSH. They were not marked when they arrived at the customs?

Mr. LOCKETT. Yes, sir; and my answer to that is that in most cases, in practically all of the cases, the markings at the time they entered the customhouse did indicate to the man who was going to use the

goods, especially in the case of raw materials, or the one who was going to sell the articles the country from which those goods came. I really think, Senator, there is a lot of merit in my suggestion, if I do say so myself.

Mr. ROSENHIRSCH. This is a sample bundle of the bristles exported by the Russian Government. They were shipped that way in those wrappers [indicating], and that is the way it looks after you break the wrapper open.

Senator WALSH. "Russia," of course, is on this one.

Mr. ROSENHIRSCH. We have had to stamp that on in this country. If you notice the printed words closely, the "Origin Siberia U. S. S. R.;" "Rosnoexport" and the star of the Soviet Government are all on there.

Senator WALSH. Yes.

Mr. ROSENHIRSCH. The proposed amendment will, therefore, afford us some relief, but delays our delivering of merchandise by many days. We suggest more far-reaching changes. It is conceded by everybody that the law requiring marking was not designed to raise revenue, but was intended to protect our manufacturers from unfair competition and our consuming public from deception. Applied to bristles, the statute and regulations serve no useful purpose. Bristles are produced solely in China, Siberia, Eastern Russia, and Northern India, none are produced in this country. On the other hand, bristles are used almost exclusively by manufacturers of brushes. They never go to the consuming public. When a manufacturer uses bristles, he breaks the bundle and makes it loose, ready for washing and mixing. That being the case, whom does our Government seek to protect? The producer? There is none. The importer or manufacturer? I unhesitatingly declare that there is not a single importer or manufacturer of bristles in business today who cannot at a glance, tell the country of origin of every bristle he sees, without being told the name of the country of origin. The difference between bristles produced in different countries is so striking that a novice in the business could not possibly be deceived. If you will examine the difference between that one [indicating] and this one [indicating] you can see the difference. This is Chinese and this is Russian [indicating]. There is not a person who is in that business who cannot tell the difference between them at a glance.

So, I say, you are trying to help people who would much rather be left alone in this situation. Restrictions only hinder the importation of a useful and necessary commodity. We urge you to adopt the same rules that Great Britain has seen fit to follow, namely, that bristles as such need not be marked with the country of origin. The British consulate in New York have advised me that certain types of commodities need not be marked. They did not tell me whether it was the law or regulations. I have a copy of the regulations with me, but they seem to say that in this situation commodities of this character do not have to be stamped with the country of origin, because they do not produce bristles in Great Britain and they do not, therefore, come in competition with the product of manufacturers in Great Britain. That is the general rule with them.

Senator WALSH. The difficulty is that we might have to make a good many other exceptions to general law if you set up the bristles as an exception.

Mr. ROSENHIRSCH. I think that they could be classified in a certain way, if there are other commodities like bristles that are produced abroad and that do not come in competition with American producers.

Senator WALSH. How about rubber, for instance?

Mr. ROSENHIRSCH. Well, I understand they produce synthetic rubber here, therefore, it would be in competition with the American producers of rubber.

Senator WALSH. Have you any specific recommendation?

Mr. ROSENHIRSCH. It is our opinion that in a commodity like this, that is used by a manufacturer who breaks the bundle open and then incorporates that into a product such as brushes, when the source of the bristles has no connection with the ultimate stamp that is placed on the brush itself, and the brushes that are produced in the United States are stamped "Made in the United States" but nevertheless the bristle itself does not come from the United States, in that situation I think the law might be changed to except commodities of that character. That bristle, or that bunch as you see it [indicating], gets as far as the manufacturer.

Senator WALSH. You want a provision for some marking, but you do not think that the same definite marking is required as is required on goods in competition with commodities produced in this country?

Mr. ROSENHIRSCH. I do not think any marking is necessary at all on this particular commodity.

Senator WALSH. Is lumber now marked, Mr. Johnson?

Mr. JOHNSON. No, sir.

Senator WALSH. Are there any things definitely exempted from marking under the present law?

Mr. JOHNSON. The Secretary under the present law is authorized to except the articles from marking in four cases.

Senator WALSH. In four cases. What are the cases?

Mr. JOHNSON. Where they are incapable of being marked, where they cannot be marked without injury, when the marking would entail an expense economically prohibitive of the importation and when the working of the immediate container will sufficiently indicate the origin of the article.

Senator WALSH. And he was suggesting a new exception, namely, goods imported into this country that are not in competition with goods produced in this country. That is what it amounts to, does it not?

Mr. ROSENHIRSCH. I think it would have to go further than that, because goods might be imported into this country and be sold directly to the consumer, naturally, because a false stamp on them might indicate an American origin, whereas, in fact, it might have been a Japanese product and therefore subject of being rejected. In our situation, it goes to a manufacturer, who then processes it. It is possible, I imagine, that the Department would interpret subdivision (3) (e) that such article is a crude substance. Of course, I do not know whether they would consider this particular commodity a crude substance.

Senator WALSH. It does not look very crude.

Mr. JOHNSON. The tariff act distinguishes between crude bristles and bundled bristles.

Mr. ROSENHIRSCH. These are bundled bristles, therefore they could not come under the proposed amendment that it is a crude substance. I think there should be an amendment.

Senator WALSH. You are not likely to have that trouble in the future, are you, that your shippers abroad will not know the requirements for marking?

Mr. ROSENHIRSCH. We have just had this situation arise on the Tsingtao bristle from China. They know all about it. I understand the employees of this particular firm ran into the interior as soon as the Japanese invaded Shanghai and they used any stamp that they could obtain.

Senator WALSH. Does the Treasury have any authority in special cases to permit imperfect marking where it is clear as to what the country of origin is, where indirectly the country of origin may be recognized, and have they permitted a marking of the country of origin after the goods arrived?

Mr. JOHNSON. Not without the payment of the 10-percent duty.

Senator WALSH. Some such provision, Mr. Johnson, would cover the situation, I think.

Mr. JOHNSON. Of course, this bill would permit the marking after it reached the United States without the requirement of the 10-percent duty.

Senator WALSH. That is true.

Mr. ROSENHIRSCH. Except in some situations, it would help us.

Senator WALSH. You would prefer not to have any marking. You think this bill would help a good deal, though?

Mr. ROSENHIRSCH. It would. We have had another situation—I have the files here to show—in which we imported three cases of Russian bristles from England. It might have been Chinese bristles from China. When the cases arrived in this country, consignment notices or orders were sent to our broker. The merchandise did not come into our possession, it went directly from the dock to the customers. One case was taken to the examiner for examination and the other two were shipped to our customers. One of them was the Rubberset Co in Newark. The examiner found that the markings were "Origin Siberia U. S. S. R.," and the rest of it, and asked us to get the other case back. Under the present law it would require, if we could stamp it properly, just 10 percent duty. Under the new law, if we could get the case and produce it I suppose we would not have to pay any duty.

Senator WALSH. Does the "country of origin," mean that there is a distinction from a country of shipment?

Mr. JOHNSON. Yes, sir. The country of origin is the place of production. It may not be the place of exportation to the United States.

Senator WALSH. So in case they desired to avoid a boycott of the goods coming to this country from any particular country, it would be very important to have the marking show the place of origin instead of the place of shipment?

Mr. JOHNSON. Yes, sir.

Mr. ROSENHIRSCH. We submitted to the Department an affidavit of the Rubberset Co. to the effect that the bristles were genuine Russian bristles, that the case was marked "Rasnoexport, U. S. S. R." and the rest of it, but we got no relief whatsoever, and the new law does not give us any relief on that because we cannot produce the case that went to our customer. If the new law would permit us to file an affidavit stating that the merchandise that our customer received was exactly

like the merchandise in the customs custody it would be all right, but we cannot do it.

Senator WALSH. Would not your attention be called to the absence of the marking by the customs officers and you would be given a chance to mark the country of origin before the goods were shipped to the manufacturer?

Mr. ROSENHIRSCH. No; because they permit you to deliver I think at least 90 percent of the goods. That being the case you can deliver the merchandise from New York to Newark in about 24 hours, and you might not hear from the customs examiner for at least 3, 4, or 5 days, and the merchandise might be used in the meantime, the case destroyed.

Senator WALSH. Would you be allowed to withdraw the goods immediately upon arrival without somebody noting the absence of the marking of the country of origin?

Mr. ROSENHIRSCH. That was not the case before. The customs department might have a different regulation now.

Senator WALSH. How could they find it out afterwards, if they did not notice it before the goods left?

Mr. ROSENHIRSCH. The examiner gets the case up to his office on Varick Street, he makes a notation of the character of the marking, and if he finds any error I think he informs the legal department at the customhouse and between the two of them they make the report that the markings are improper, and then we find out about it, and not until that time.

Senator WALSH. You mean to say that under the existing law it is possible for goods which are improperly marked to be delivered to consignees?

Mr. ROSENHIRSCH. Absolutely.

Senator WALSH. Suppose we pass a law to have the customs officials administer it?

Mr. ROSENHIRSCH. Well, it is an administrative impossibility, I imagine, to hold them up until that time.

Senator WALSH. Cannot they use their eyes?

Mr. ROSENHIRSCH. I know, but with the volume of imports coming to New York it is almost impossible to hold all the merchandise, and even 10 percent clogs them up as it is.

Senator WALSH. They release 90 percent and hold 10 percent so as to expedite delivery, and then when they get around to examine the 10 percent and they find the absence of marking that applies to the 90 percent that has disappeared in trade?

Mr. JOHNSON. Yes, and that marking, Senator, many times is inside the cases. It could not be determined merely by the examination of the outer case which is released.

Mr. ROSENHIRSCH. In our situation we have a two-fold problem. The examiners in New York think those are not containers or wrappers that need not be marked. We have had different opinions from different individuals of the Bureau. We are all in favor of holding that these are not wrappers, because, as you can see, these break open very easily [illustrating]. I mean as far as the containers are concerned, we would rather they not be considered containers but, rather, loose.

Senator WALSH. Have the manufacturers knowledge, as well as the general public, or the consumers, of the place of origin of the goods that they purchase?

Mr. ROSENHIRSCH. Generally, I could not answer that.

Senator WALSH. Why should not the manufacturers, as well as the general consuming public, be given knowledge of the origin of the goods that they purchase and use in their business?

Mr. ROSENHIRSCH. Generally speaking, I mean as far as the general manufacturer is concerned, I cannot answer that. As far as bristles is concerned, I will state emphatically that there is not a bristle manufacturer in the country who does not know the difference between the two immediately. If he does not he should not be in business.

Senator WALSH. Is there any substitute?

Mr. ROSENHIRSCH. There are substitutes like horse hair and fiber, but they are as different as corn and wheat.

Senator WALSH. We have had people in our committee who argued for the substitution of apples for bananas.

Mr. ROSENHIRSCH. Well, we cannot very readily be deceived.

Senator WALSH. It is a very interesting presentation, in view of the fact that you have one of the very few finished commodities that appears to be nonproduced in this country.

Mr. ROSENHIRSCH. It is very unusual that this should be brought up in this way, because bristles are one of those things that people very seldom hear about. They know what brushes are but not what bristles are.

Senator WALSH. Is there any other section that you want to address yourself to?

Mr. ROSENHIRSCH. In connection with that, of course, I would like to comment on subsection (c). We do not understand why the 10 percent may not be left discretionary with the Treasury Department, but of course that is something which the committee itself knows best. If this were discretionary with the Treasury Department, why, we could then take up each case with the Department and straighten it out that way, and I do not suppose we would have to go through all this formality. We found the Department in many instances helpful to us, but they have been bound by the law.

(Subsequently Mr. Rosenhirsch submitted the following amendments for the consideration of the subcommittee:)

SUGGESTED AMENDMENTS TO H. R. 8099, CUSTOMS ADMINISTRATIVE ACT

Section 3, amending 304, subdivision a, 3: To incorporate therein an additional paragraph under the authorizations of the exception of articles from the requirements of marking and to be placed between paragraphs F and G on page 3.

"Such article is not produced in the United States and must be processed before the finished product, of which it is a part, can be used or disposed of so that the identifying marks contemplated by this section would necessarily be obliterated, destroyed, or removed from said article during the processing or would not be required under the provisions of the Tariff Act, to be placed upon the finished product."

Explanation: Bristles are not produced in the United States. They are manufactured into brushes of which they become a component part. Any marks contemplated by this section cannot be placed upon the bristles in the finished product. In fact, the finished product is usually and lawfully marked, "Made in U. S. A." If the committee sees fit, it might even end this amendment after the words, "disposed of."

Suggested amendment to section 32: After the word "enactment," a comma, and then the following: "And shall apply to all customs entries not finally liquidated."

Explanation: This amendment would grant the relief which we require in pending entries which have not been finally liquidated. We have several cases now

pending before the Customs Bureau in which we have applied for relief for varying reasons. The statute would not be retroactive to cases which have already been closed and upon which the additional duty has been paid. This amendment would be procedural in effect, but would grant us the necessary relief which we require.

Senator WALSH. Thank you. Mr. Cohn.

STATEMENT OF LOUIS MARBE COHN, NEW YORK CITY, EXECUTIVE SECRETARY, AMERICAN ASSOCIATION OF FELT AND STRAW GOODS IMPORTERS, INC.

Senator WALSH. Mr. Cohn, will you give us your full name?

Mr. COHN. Louis Marbe Cohn. I am an importer on my own account and executive secretary of the American Association of Felt and Straw Goods Importers, Inc., 15 West Thirty-seventh Street, New York.

Senator WALSH. What section do you desire to comment on?

Mr. COHN. I want to speak on the bill just a moment as a whole, Mr. Chairman, if I may.

Senator WALSH. Are you in favor of it?

Mr. COHN. I am heartily in favor of it and I want to endorse it wholeheartedly. I think the Treasury Department has done an excellent job in framing it and has done great work in trying to relieve some of the difficulties that now face importers. I want to make one or two observations rather than any objections to particular sections.

We want to endorse, that is, individually I want to endorse section 3 of the bill amending section 304 of the tariff act. Contrary to many of the complaints and criticisms I have heard down here on behalf of other associations of importers, I want to say that I, as an importer, have been penalized for improper marking, but I think as a general proposition, the Customs Bureau and the Treasury Department in charge of the division of customs have leaned backward in trying to be fair on this question of marking.

Senator WALSH. You had better get into communication with Mr. Lockett.

Mr. COHN. No; I feel as though they must have some hard and fast rule to go by, because the minute there is a slight deviation there is opened up a whole field of complications. I have three or four of my own membership and of my own cases pending, and I must say I find the officials extremely helpful and willing to listen to reason.

This section of the proposed bill eliminates many of the injustices, but I am sorry to say too many of us are prone to want the Treasury Department to help us out when we have not been sufficiently careful in instructing our shippers abroad on the regulations of the tariff acts. We want relief when we have not properly taken care of those provisions of the act when we arranged to purchase our goods. I believe in many trades the exporters or shippers are familiar with these regulations, and they are not too onerous.

In connection with section 3 of the bill I just want to make one observation, on subdivision (e), having to do with penalties, and I make this observation without any boycott activities in mind.

In our own particular industry we found a few miscreants who defaced and obliterated the marking of the goods after they had been released from customs custody. I believe the Treasury Department

takes the attitude that the enforcement of this particular section, of the previous section of the tariff act, comes within the work of the Department of Justice, but I do think that the committee might give more consideration to the penalty section.

Senator WALSH. Have there been cases where 10 percent of the goods were retained and 90 percent withdrawn after getting into the hands of the consignee?

Mr. COHN. That is right.

Senator WALSH. Ten percent were found unmarked and an attempt has been made to prevent the penalty by claiming that the 90 percent had been marked?

Mr. COHN. I do not mean that, Mr. Chairman, I mean when the merchandise has arrived properly marked, and has passed through customs custody, a consignee or an ultimate purchaser with the intent to deceive the ultimate buyer or the ultimate consumer, obliterates the mark of the country of origin. Now, the question is just how far the tariff act is designed to cover the obliteration of the marking of the country of origin after release from customs custody. We have had it happen in our industry, and there is no question that probably in other industries that attempts to deceive have been made. For example, Italian goods have been pawned off as French. I do not say that this bill ought to be changed, I simply want to make this observation for your consideration, as to whether the Treasury ought to take further cognizance of such a situation, or whether the enforcement of it ought to be left entirely in the hands of the Department of Justice.

Senator WALSH. You admit it is an offense?

Mr. COHN. Unquestionably it is an offense.

Senator WALSH. And it is a question whether it should not be held that acts committed after the imported goods get into the hands of the consumers who sells or reships constitutes an offense ?

Mr. COHN. By removing the wrappers. Of course, where the article itself is indelibly marked in accordance with the requirements of the law, he cannot very well do that. Where the article is in a container and only the container must be marked, it is very easy for him to take off the container and pawn it off as the product of some other country. I do not say any change should be made, but I simply propose the question for consideration.

I want to particularly endorse section 7 and point out the difficulty that our own trade has right at the present time in a case pending before the appraising authorities, and your section 7 will probably obviate such difficulty in the future. That is, by adding the words "home consumption" to section 402. I do not know which subparagraph of section 402, but I believe that provision is necessitated by the ruling of the court that the appraising authorities must take into consideration the export value to countries other than the United States. We have such a situation now and it complicates the situation measurably, and the Department's recommendation ought to be carried out.

Then, in particular I ask to be heard, Senator Walsh, in connection with section 15, which is the section that permits American producers' protests. I appeared before the Ways and Means Committee on this section, and I cannot too heartily endorse the whole section. Our trade has been subject to no less than three protests since 1930, when the original tariff act was passed, two of which have been litigated

through the courts, neither of which have been sustained, and we are at the present time under difficulties. It is difficult to restrain one's self in characterizing the nature of the weapon that is afforded here, which simply permits the producer to hold up the whole works and to dislocate the entire trade. The very filing of a protest dislocates the importing industry subject to that protest. We have people who come into the business to gamble and speculate in the very commodity that is the subject of protest, not because they expect to win or lose the protest, but because of the speculative possibilities that are inherent in such a situation, getting a refund, or gaining something in one way or another.

I want to say that this section 15 will eradicate the cause of a great deal of inequity in such cases.

Senator WALSH. Is there anyone present who would like to be heard today before the subcommittee adjourns, to save the subcommittee's time later? If not, the subcommittee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 11:50 a. m., a recess was taken until 10 a. m. of the following day, Thursday, January 27, 1938.)

CUSTOMS ADMINISTRATIVE ACT

THURSDAY, JANUARY 27, 1938

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
UNITED STATES SENATE,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., in the Senate Finance Committee Room, Senator David I. Walsh (chairman) presiding.

Senator WALSH. The committee will come to order. The first witness on the calendar this morning is Mr. Eli Frank, Jr., of Baltimore.

STATEMENT OF ELI FRANK, JR., BALTIMORE, MD., REPRESENTING THE NATIONAL CUSTOMS SERVICE ASSOCIATION

Senator WALSH. Your name is Eli Frank, Jr.?

Mr. FRANK. Yes, sir.

Senator WALSH. Your residence is Baltimore, Md.?

Mr. FRANK. That is right, sir.

Senator WALSH. You are representing here the National Customs Service Association?

Mr. FRANK. That is correct.

Senator WALSH. What section of this bill are you particularly interested in?

Mr. FRANK. Only section 8.

Senator WALSH. We will be pleased to have your views on section 8.

Mr. FRANK. I might say that this statement which I am about to read was prepared after the amendment proposed by Mr. Van Allen was submitted to the committee but before conferences were held between representatives of our association and other representatives of the bridge companies. Now there is in the course of negotiation the possibility of a compromise amendment. However, we feel that it is best for us to express our opinion on the Van Allen amendment, and we will report to the committee as soon as we can on the result of these negotiations.

The National Customs Service Association wishes to inform this subcommittee of its position with respect to section 8 of H. R. 8099. The association was satisfied with this section as passed by the House of Representatives on August 19, 1937. The House bill enacts the purposes actuating the Treasury Department in proposing the bill, which purposes are embodied in the document entitled "Explanation of H. R. 8099, the Customs Administrative Bill," filed with this subcommittee on Tuesday, January 25, 1938, in the following words:

SEC. 9. Existing law authorizes the assignment of customs officers and employees to overtime duty, and the payments for such overtime by the requesting

master, owner, or agent only in connection with the unlading or lading under special license of merchandise, baggage, or passengers, the entering or clearing of a vessel, or the issuing and recording of its marine documents, bills of sale, mortgage, or other instruments of title.

Merchandise, baggage, and persons may arrive otherwise than by vessel or vehicle, as in the case of livestock driven into the country. Moreover, overtime customs services are sometimes requested for the benefit of importers or exporters in connection with the segregation or manipulation of merchandise, and in various other circumstances not included in the above enumeration.

The proposed amendment of the law is, therefore, deemed desirable to eliminate present inequities by uniformly requiring the payment of overtime compensation for all overtime services performed on special request and for the benefit of particular importers, exporters, or carriers.

It is clear that the Treasury Department proposed only that section 8 extend the provisions of the overtime law to all overtime services performed on special request. At the time that H. R. 6738, the predecessor bill was being considered by the Committee on Ways and Means of the House of Representatives, the National Customs Service Association proposed the following amendment at the end of section 8 of H. R. 6738, by adding the following to the end of section 451 of the Tariff Act of 1930:

The authority to regulate hours now vested in the collector of customs by the last proviso of section 5 of the act of February 13, 1911, as amended shall not include the authority to make assignments to regular duty on Sundays or holidays, either by day or at night, in compliance with such requests in the place of assignments to regular duty on other days or nights.

The reasoning behind this proposed change was in substance as follows: No man wishes to work on Sundays or holidays if such service can be avoided. Sundays and holidays are the days when children are at home and families gather. Churchgoing means as much to many customs employees as it does to many other citizens of our country. Consequently, no day in the week can compensate a man for time away from home on Sundays or holidays. It should be noted at this point that the amendment proposed by the National Customs Service Association sought not to compel the payment of overtime for night work, nor the abolition of the platoon system, but merely the privilege to employees to spend Sundays and holidays with their families, a privilege that most of our citizens now enjoy and jealously guard. If the employees' services should be necessary for the operation of a toll bridge on Sunday, it seemed only just that the employee be reimbursed for this service, which is, in the final analysis for the benefit of private commercial interests.

At the time when this amendment was being considered by the Ways and Means Committee of the House, the National Customs Service Association was informed that this amendment granting the employee the right to spend his Sundays and holidays at home, involved a change in the law, since it impaired the authority of the Treasury Department to assign officers on regular tours of duty on Sundays or holidays. In order to make certain that such authority in the Department was to remain unimpaired, the last sentence of the present section 8 was inserted as follows:

Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular duty at nights or on Sundays or holidays when such assignments are in the public interest.

The association is satisfied with the bill as passed, embodying the compromise as reached between the Treasury Department and the

association. If, however, the section is to be reopened to amendment by suggestions from private interests, the association is forced back to insistence on consideration of its original proposal. We wish to emphasize that the House bill is a compromise, crystallizing the present situation as to overtime compensation at border points, and leaving the Department full discretion to deal with those matters as the public interests may require.

The proposed amendment offered by Mr. Van Allen on January 25 in behalf of the International Peace Bridge at Buffalo, N. Y., should be examined, first, as to form. The proposed final sentence of section 8 now reads:

> Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tour of duty at night or on Sundays or holidays, when such assignments are in the public interest.

Mr. Van Allen's amendment proposed to add to this sentence:

> Or to authorize the collection of overtime compensation for services of a kind which were being regularly performed by customs officers or employees assigned to regular tours of duty at night or on Sundays or holidays, in connection with international traffic over ferries or highway bridges or through highway tunnels on July 1, 1937, and which shall hereafter be performed in connection with such traffic.

We have been informed that since the presentation to this subcommittee of the bridge interests' amendment a conference has been held with the Treasury Department officials at which this amendment has been slightly changed. The substance of the new amendment is, however, equally objectionable to the National Customs Service Association, and the arguments hereinafter to be presented against the amendment as originally suggested apply with equal force to the amendment as changed at the conference with the Treasury Department officials.

This amendment nullifies much of the language of the foregoing parts of the section and makes the section self-contradictory.

May I call to the attention of this committee that this is not the first attempt to exempt from the provisions of the overtime compensation law such facilities operated by special private interests, and that as long ago as 1921 a bill was introduced in the Senate (S. 1774, 67th Cong., 1st sess.) to provide that steamships on regular runs of less than 200 miles should be exempted from payment for overtime services.

At this same session of Congress S. 2188 was introduced, having for its purpose the addition of a proviso to section 5 of the act of February 13, 1911, exempting railroad trains coming from contiguous foreign territory from the payment of overtime compensation. An amendment was suggested during hearings to add bridges, street railway cars, interurban cars, or ferries and the owners, operators, or agents thereof to the exemption from the payment of such compensation.

Neither of these bills was enacted into law for the same reason which we now contend should actuate this Congress in refusing to enact the proposals of the bridge company.

At the time of revision of the Tariff Act in 1929, consideration was given to an addition of a subsection (b) to section 451 of H. R. 2667, which became the Tariff Act of 1930. This subsection was of the

same general tenor as the bills just described, in that provision was to be made that section 5 of the act of February 13, 1911, as amended, relating to extra compensation, should not apply in respect to services rendered after the effective date of the act in connection with railroad trains, ferryboats, or international bridges or tunnels. Congress refused to pass such legislation, and we maintain that the wise stand then taken should not now be reversed.

Representatives of the bridge companies who have appeared before your honorable subcommittee have stated that their proposed amendment involves no change in the present law or practice. This statement is not, in fact, correct, and might tend to mislead this subcommittee. It must be remembered that, in addition to international bridges, which these gentlemen represent, the proposed amendment also includes traffic through international tunnels and by way of international ferries. Some of these ferries have been and are now reimbursing the Government for overtime compensation.

For many years the Government has been granting a form of subsidy to international passenger bridges. Ever since 1911 the intent of Congress has been to provide extra compensation for customs employees who are compelled to work at unusual hours for the benefit and profit of private interests. The bridges have been enjoying a form of immunity from the payment of overtime compensation by virtue of a decision of the United States Supreme Court, because they did not come under the description of the words, "vessels or conveyances." International passenger ferries, however, have been judicially determined to be vessels and consequently are legally subject to the payment of overtime compensation for customs officers and employees (*Port Huron & Sarnia Ferry Co.* v. *Lawson*, 292 F. 216). This proposed amendment seeks to change the law in respect to such ferries by forbidding the collection of overtime compensation for overtime services performed by customs employees. It admittedly was not the intention of the Treasury Department in proposing section 8 of H. R. 8099, nor of the House of Representatives in passing the bill containing this section, to change the overtime law in such a manner.

The National Customs Service Association desires to reiterate its willingness that the present results of the statutes and present administrative rulings be preserved. The association is satisfied to leave with the Treasury Department discretion to determine what facilities must be relieved of the necessity of reimbursing the Government for overtime compensation, and what facilities the public interest demands shall be operated free of this charge. It is not willing to assent to an amendment which would bind the Department either to go to the taxpayers for the money to pay for this service to private interests, or to compel this service at the expense and serious inconvenience of the customs employees who compose the membership of this association.

Now the amendment on which we are conferring is not quite in final form and I would appreciate the action of the committee if it would allow us to report back on these conferences later during this morning's session.

Senator WALSH. You may do that. The next witness is Mr. R. R. Boynton.

STATEMENT OF R. R. BOYNTON, DETROIT, MICH., REPRESENTING THE NATIONAL CUSTOMS SERVICE ASSOCIATION

Senator WALSH. Your name is R. R. Boynton?

Mr. BOYNTON. Yes, sir.

Senator WALSH. Your residence is Detroit, Mich.?

Mr. BOYNTON. Yes, sir.

Senator WALSH. You represent the National Customs Service Association?

Mr. BOYNTON. Yes, sir; chairman of the overtime committee of the National Customs Service Association. Mr. Frank, our attorney, has stated our case very clearly. The only thing is, if there is a question I will endeavor to answer it.

Senator VANDENBERG. I would like to ask Mr. Boynton if he is familiar with the protest that was made by the Detroit overtime committee, Mr. Anthony P. Geissler, chairman, in regard to this general problem in 1937?

Mr. BOYNTON. That dates back to the time of the opening of the bridge, Senator; that is the Ambassador Bridge from Detroit to Sandwich, Ontario. At that time the Department, utilizing its discretion under the last proviso of section 5 of the act of 1911, as amended, deemed it unfair to the ferry company between Detroit and Windsor, on account of the decision of the Supreme Court in the *Niagara Falls bridge case* which is cited in Mr. Frank's statement, although I do not think he gave the citation, it is 257 U. S. 506. The ferry company was being required to pay for overtime compensation of customs officers on Sundays and holidays, not at night. The bridge company, on account of the decision in the *Niagara Falls bridge case,* would not be required to do so, and the set up that was provided at that time was for officers assigned to the bridge to be given a day off a week at public expense in lieu of Sunday. The same arrangement was made for the ferries.

The protest that Mr. Geissler refers to there is predicated upon the law and the decision of Judge Tuttle in the *Port Huron-Sarnia* v. *Lawson* case, which decided that ferries were squarely in the law and should pay the overtime. Of course, there was a question, and a very large question of injustice, and it is recognized by the employees that it would be an injustice to require the ferries to pay the overtime and not require other facilities more modern to do the same. The law has not kept abreast of the change in facilities. When the bridge was built at Detroit and when the tunnel was built at Detroit they, to a large extent, displaced the ferries.

Senator VANDENBERG. Would you be in a position to state how Mr. Geissler's committee and their problem would be affected by this pending legislation?

Mr. BOYNTON. There would be no change. The problem would still exist, so far as they are concerned, if there is no change in this section 8 as passed by the House. If the amendment which was advocated by the National Customs Service Association before the Ways and Means Committee on the hearing on H. R. 6738 had been incorporated into the law, it would have required bridges and any other facilities eventually to pay for Sunday and holiday service as overtime.

Senator VANDENBERG. Are Mr. Geissler's overtime committee in Detroit and the group he represents members of your association?

Mr. BOYNTON. No, sir; they are not. Some of them are individually, but the group as a group is another organization.

Mr. SPINGARN (Mr. Stephen J. Spingarn, attorney, Office of the General Counsel, Treasury Department). Senator Vandenberg, the other day you asked us to prepare a brief statement for you on the Detroit customs situation. We have it here with us, and we will give it to you now.

Senator VANDENBERG. I would like to put it into the record after I have read it, Mr. Chairman.

Senator WALSH. Very well.

(The statement referred to is as follows:)

MEMORANDUM FOR SENATOR VANDENBERG

Certain customs employees at Detroit, represented by Mr. Anthony P. Geissler, contend that:

1. Customs inspectors are entitled to extra compensation under the Overtime Act (U. S. C., title 19, sec. 267) if they work between the hours of 5 p. m. and 8 p. m. or on a Sunday or holiday, even though such work is performed during a regular 8-hour tour of duty; and

2. That the Secretary of the Treasury cannot properly authorize the assignment of customs employees to regular tours of duty on Sundays and holidays because there is no authority of law for allowing compensatory time off to employees so assigned.

Under existing law the operators of international highway bridges and tunnels cannot be required to reimburse the United States for the compensation of customs employees assigned to such places for customs work at nights or on Sundays or holidays [(*International Railway Co.* v. *Davidson* (1922) 257 U. S. 506)], but customs facilities must be maintained at such places if required by the volume of traffic.

When the Ambassador Bridge was opened at Detroit on November 15, 1929, it was necessary to add 26 new inspectors to the local customs force to maintain customs facilities at the bridge for 24 hours each day and 7 days each week. The employees were assigned under a platoon system under which each employee assigned to duty at the bridge worked not more than 8 hours a day and not more than 6 days a week on his regular tours of duty. Sunday and night work was rotated among the men. In order to prevent discrimination a similar system was installed with respect to the customs facilities at the ferry docks at Detroit, and five additional inspectors were employed for this purpose. The customs inspection at the ferry docks had previously been performed on Sundays and holidays by customs inspectors who had already served on their regular tours of duty and these employees received extra compensation under the Overtime Act for the extra work, the Government being reimbursed by the ferry company for the extra compensation paid.

The assignment of customs employees to regular tours of duty at nights or on Sundays or holidays is clearly authorized by the Overtime Act, section 624 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1624), and sections 161 and 249 of the Revised Statutes (U. S. C., title 5, sec. 22 and title 19, sec. 3). A decision of the Comptroller General rendered on September 15, 1936 (16 Comp. Gen. 243), held that a former customs employee in the Michigan district was not entitled to extra compensation for services he performed on Sundays and holidays during the period 1929 to 1933.

It is not the purpose of section 8 of the H. R. 8099 to deprive any customs employee of overtime compensation to which he is entitled under existing law. On the contrary, it is designed to provide for the payment of extra compensation in cases where customs officers now perform overtime services for the benefit of private interests without receiving extra compensation.

The Treasury Department does not favor the employment of customs employees beyond their regular working hours where this can reasonably be avoided because the employees render more efficient service if permitted to enjoy regular intervals of rest and relaxation. It is also to be noted that if employees assigned to duty during the full week were permitted or required to work overtime regularly at

nights or on Sundays and holidays, fewer employees would be needed and a reduction of the force would probably result.

Senator WALSH. Mr. Boyd.

STATEMENT OF CHARLES E. BOYD, REPRESENTING THE RETAIL MERCHANTS ASSOCIATION, DETROIT, MICH.; AND THE NATIONAL RETAIL DRY GOODS ASSOCIATION

Senator WALSH. Your name is Charles E. Boyd?

Mr. BOYD. Yes, sir.

Senator WALSH. And your residence is Detroit, Mich.?

Mr. BOYD. Yes, sir.

Senator WALSH. You represent the Retail Merchants Association of Detroit?

Mr. BOYD. Yes, sir.

Senator WALSH. And the National Retail Dry Goods Association?

Mr. BOYD. Yes, and several other groups that I will mention.

Senator WALSH. You may proceed to present your views in regard to this legislation.

Mr. BOYD. My name is Charles E. Boyd. I have been on the staff of the Detroit Board of Commerce for 16 years, during the last 10 of which I have been secretary of the Retail Merchants Association of Detroit, Mich. I wish to speak to section 31 of H. R. 8099, which is a bill to amend certain administrative provisions of the Tariff Act of 1930.

For more than 16 years, the members of the Retail Merchants' Association, of Detroit, have been greatly disturbed regarding that particular customs regulation of the Treasury Department which permits a resident of the United States, when returning from abroad, to bring back a hundred dollars' worth of merchandise, free of duty. Other retail groups, likewise, are greatly concerned over this same regulation, and many of them have been just as aggressive as has my own organization in trying to convince the Members of Congress that there is need for a change in the tariff act as it relates to this particular point. In addition to speaking for my own organization, I also desire to speak on behalf of the Retail Merchants' Association, of Buffalo, N. Y.; the Retail Merchants' Association, of Seattle, Wash.; the Texas Retail Dry Goods Association; and the Retailers' National Council, which is a national federation of national retail trade associations, its membership consisting of the following: National Association of Men's Clothiers and Furnishers, American National Retail Jewelers' Association, National Retail Furniture Association, National Retail Hardware Association, National Association of Food Chains, National Retail Dry Goods Association, National Council of Shoe Retailers, National Shoe Retailers' Association, Limited Price Variety Stores' Association, and Mail Order Association of America.

This national group represents some 200,000 retail establishments and has endorsed and approved section 31 of H. R. 8099 requiring the 48-hour period before a returning resident can take advantage of the tariff exemption of $100. Each of these organizations has asked that I present our problem to you as we see it and thereby solicit your sympathetic help.

When the provision was inserted in a previous tariff act which permitted residents of the United States who had been touring abroad

and were returning to the States, to bring in a hundred dollars worth of merchandise duty free, the pages of the Congressional Record will show that it was done for the purpose of enabling those United States residents who had been actual tourists or bona fide travelers in some foreign country to bring back into the United States free of duty, up to $100 worth of such souvenirs, gifts, wearing apparel, and so forth, as had been purchased as incidents to their trip. Not by the wildest stretch of the imagination can it be assumed that Congress intended that privilege to be used by that type of United States resident who has been out of this country only for as short a period as an hour or less and had in mind certain definite purchases of foreign merchandise that he wanted to make when he went to some neighboring country. It is that abuse of this privilege to which I want to direct your attention.

I am convinced that retailers generally have no objection to the legitimate use of this exemption feature, namely, when it is used by a United States resident when he returns from a bona fide tour through some foreign country, but we do object very strongly to the abuses which have grown up under this exemption privilege of the tariff act.

When this $100 free duty exemption feature first was put into the tariff act a number of years ago, our retail groups endeavored to have Congress define a tourist in some such way as would avoid our present criticism. We were unsuccessful. Again in 1930 we endeavored to have Congress insert in the tariff act the qualification that the tourist must be one who had been out of the United States for a given period of time—we recommended 1 week—before he could have the privilege of this exemption when he returned to the United States. In spite of all of our efforts at that time, there was only a slight change made in this particular section and it has proven to be of practically no value whatever. That change was the stipulation that the hundred dollar exemption could not be secured more than once in 30 days.

During the past 2 to 3 years a very great increase in the number of exemptions being granted under this exemption feature of the present act has been noticeable at ports along the Canadian and Mexican borders. I have made it my business to secure some figures covering such exemptions at Detroit and I want to show them to you. Detailed checks were made in 1936, on Saturday, December 5; Saturday, December 12, and during the full week of December 13 to 19. The total amounts exempted at the one port of entry of Detroit under the two classifications as registered, were:

	Exemptions under $25		Exemptions over $25	
	Number	Value	Number	Value
Dec. 5	5,319	$27,383.10	156	$7,503.39
Dec. 12	5,640	29,998.99	139	6,241.02
Dec. 13-19	16,426	78,372.58	411	19,316.43
Total	27,385	135,754.67	706	33,060.84

It will be noted that the total value of exemptions granted for the 1-week period from December 13 to 19, inclusive, is $97,689.01. Those figures indicate that 16,837 exemptions were claimed under this provision during those 7 days. That is an average of over 2,500

tourists returning from Canada every day. Can you imagine 2,400 bona fide tourists returning from Canada every day through our one port of Detroit alone, especially in the middle of December when tourist travel across our Canadian border is just about at its lowest ebb? Why, it's preposterous?

The answer is that the vast majority of those exemptions were claimed by residents of the United States who had gone just across the border to make purchases of food and other miscellaneous merchandise. That contention can be borne out by the most casual observation of these returning residents and the almost total lack of any overnight luggage that many of them carry with them. Further proof of the fact that the vast bulk of these exemptions are claimed by the most temporary of tourists is found in the amount of the average exemption claimed during that 1 week by 16,426 so-called tourists which was $4.75.

During the last year or more, the use of the hundred-dollar exemption privilege has become so prevalent by transient commuters at Detroit that our local customs officials have not been able to keep the records of exemptions granted of amounts under $25 in value, because of the limitations in their clerical help to permit them to maintain such figures. However, from the periodical checks that have been made we could prove to the members of your honorable body that the total value of the free of duty merchandise passed in our own port of entry at Detroit would be in the neighborhood of $5,000,000 annually.

You may ask why the customs officials at all of the ports of entry on the Mexican and Canadian borders cannot stop this abuse. The answer is simple—the tariff act does not permit them to. The customs regulations, based on the wording of the act, do not permit the officials to take any different latitude in handling this exemption for the commuter to Canada as compared to the tourist returning from Europe.

These thousands of people who swarm over to Canada or Mexico in the morning and come back within an hour or two, loaded down with foodstuffs and other purchases, and claim exemption therefore, glibly inform the customs officials that they have been away on business or to visit a friend and have made the purchases as an incident to the trip. The exemption, of course, is granted, although it is the opinion of our customs officials that the vast majority of these people have gone over to Canada or Mexico for the express purpose of buying the foreign merchandise.

May I call your attention to another phase of this abusive use of a privilege which results in a definite loss. The States of Calfiornia, Washington, and Michigan have State sales tax laws and each State raises much of its State revenue therefrom.

In Michigan we have a 3-percent sales tax and on the items enumerated above, for just these 9 days where the total exemption is approximately $170,000, the State of Michigan lost over $5,000 in sales tax revenue that would have been forthcoming to the State treasury if these same purchases had been made in Michigan. I recognize that some of them would have been made in other States, but a very large proportion of that loss was incurred by our own State and the corresponding situation prevails at other ports of entry in those States which have a sales tax.

Is it fair that a loophole in our present tariff act should cause such injustice and permit continued and increasing abuses?

Senator WALSH. How far is the retail store section in Canada across from Detroit?

Mr. BOYD. It is at the immediate border, sir. Most of the retail section of the border cities across from Detroit is within 4 to 6 blocks of the river. The same thing applies at Buffalo also.

Senator VANDENBERG. Are the prices sufficiently lower there to justify this amazing traffic?

Mr. BOYD. On food, the prices are about 40 percent lower, sir. Especially has that been true of meats and dairy products within the past 2 or 3 years. At the time that these figures were taken that I have read to you the customs officials were concerned about the amount of food that came across and they took the figures of their own accord, just to try to check on it.

Three years ago when the United States Tariff Commission had a committee for reciprocity information to study the questions arising in relation to a reciprocal treaty with Canada, we presented our briefs to that committee urging that if and when a reciprocal treaty was secured, Canada should grant to their Canadian residents the same privileges that the United States has been granting for many years past to our residents. For your information, previous to May 1936, Canadian residents who were returning from abroad were not permitted by regulations to secure any exemption on merchandise comparable to that provided in our regulations. That meant that while United States residents were going into Canada and making plenty of purchases and bringing them back into the United States free of any duty up to a hundred dollars of value, Canadian residents could not make any purchases in the United States and take them back into Canada under any such provision of exemption.

When the reciprocal treaty was signed with Canada it provided that, beginning in May of 1936, Canadian tourists returning to Canada from abroad, could bring back up to a hundred dollars' worth of merchandise duty free, if—and this is the important point—they had been out of the Dominion of Canada for more than 48 hours and the burden of proof is on the tourist. The Canadian regulations also stipulated that the exemption would be allowed only once in every 4 months—not once in 30 days as is our regulation.

We are convinced that the Canadian regulations established a most acceptable precedent as to how we can correct the difficulty and losses faced by our retailers and the sales-tax treasuries of our various States. It is in that respect that I wish to call your attention to section 31 of H. R. 8099, a bill to amend certain administrative provisions of the Tariff Act of 1930, this section specifically amending paragraph 1798 of that act.

In this new section, the provision is made to the effect that United States residents must be out of the United States for 48 hours or more before they can bring back merchandise duty free up to a value of a hundred dollars.

We are satisfied that such a limitation would go a long way toward correcting the present rapidly increasing abuse of this privilege which has been allowed for nearly a decade through our Tariff Act. The United States Treasury Department has approved this change and, speaking for the affected retailers of the country, we beseech your active support of the amendment as detailed in section 31 of H. R. 8099.

Senator VANDENBERG. You are satisfied with the provision as it passed the House?

Mr. BOYD. Yes, sir; we are.

Senator VANDENBERG. And as I understand it, the new rule would virtually put us upon the same reciprocal basis that Canada insists upon in respect to her travelers in the United States?

Mr. BOYD. That is right, except for the fact we would allow an exemption once in 30 days and they allow exemption once in 4 months. That is the only difference that there would be.

Senator VANDENBERG. Can you tell me, incidentally, whether there is a reciprocal arrangement in Canada which permits the Americans to commute and work in Canada from day to day and return to the United States to their domicile?

Mr. BOYD. Yes, sir, there is.

Senator VANDENBERG. There is a reciprocal arrangement?

Mr. BOYD. Yes, sir, there is.

Senator WALSH. Mr. Bevans, come forward please.

STATEMENT OF JAMES W. BEVANS, NEW YORK CITY, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS

Senator WALSH. Mr. James W. Bevans, New York City, representing the National Council of American Importers and Traders, is that correct?

Senator WALSH. Mr. Bevans, what sections of this bill would you like to discuss?

Mr. BEVANS. I would like to discuss sections 3, 7, 15, 16, 18, 24, 27, and 30. It seems like a lot of ground to cover.

Senator WALSH. Do you object to all those sections?

Mr. BEVANS. No; some of them I simply want to endorse, and others I want to discuss.

Senator WALSH. All right, commence with section 3.

Mr. BEVANS. The council, as you know, Senator, consists of between 300 and 400 importers or dealers in imported merchandise located throughout the United States. The council does not make suggestions as to rates of duty, but only as to administrative matters. This bill contains many amendments that we think are exceedingly desirable; however, there are some of them, some of the changes suggested, that we must criticize somewhat.

Taking up, first, section 3 on page 2 of the bill, which is directed to an amendment of section 304 of the present Tariff Act, the marking section. When this bill was before the Ways and Means Committee we suggested that the language of the present statute be restored, that is, with respect to the use of the word "conspicuous." The present law requires that the article shall be marked with the country of origin in a conspicuous place. Now that language has been in many tariff acts and has been interpreted by the courts. There is no difficulty concerning it at all. Now, the proposed amendment gave to the Secretary of the Treasury the right to prescribe the place of marking. When this bill came from the House it had the word "conspicuous" restored to it, but in another section of the bill, that is paragraph (*a*) subdivision (1) it still gives the Secretary the right to prescribe the place where the articles shall be marked, and another

provision of the bill gives the Secretary the right to prescribe the wording that shall be used. Now we criticize those two provisions.

Senator WALSH. Does it permit the Secretary to prescribe the wording other than the country of origin?

Mr. BEVANS. Yes; the wording that will indicate, in his opinion, the country of origin.

Now our objection to these provisions is this, and I will recite a case that has just recently developed: The Treasury Department required under the existing law that an article imported from Burma be marked "British India." Of course, Burma is one of the oldest countries in the world. It is true that the British Government has assumed control, but at the same time that this requirement was made that an article from Burma be marked "British India" the articles from Scotland and Ireland were to be marked with those subdivisions of the British Empire, not "Great Britain," or "British Empire," but "Scotland," and "Ireland," although they were closer connected with the British Empire, perhaps, than the far-off country over which the British Government had assumed control.

Now an importation came to the United States from Burma marked "Burma" and the importer was penalized $307, which is 10 percent of the value of the goods, because it was marked "Burma" and not "British India." While this case was pending in the court the Treasury Department changed its requirement and made a requirement that 60 days thereafter merchandise from Burma must be marked "Burma," and not "British India." However, that was not a retroactive ruling and does not relieve this particular importer at all in the payment of his $307 penalty, because that is what the 10 percent is.

Now, we believe that if broad discretion is given to an administrative officer to prescribe the place where the marking shall appear on an article, and the abbreviations, or the wording that should be used, without judicial review, the importer will never know exactly how the goods should be marked, because it will be changed from time to time, sometimes almost overnight. We think that the language of the present statute should be retained; that is, that the articles should be marked in a conspicuous place, in a legible manner, in English, to indicate the country of origin.

Now there is another provision that we criticize, and that is subdivision (2) paragraph (*a*) which is the—which gives the Secretary the right either to require the addition of any words or symbols which in his opinion may be appropriate to prevent deception or mistake as to the origin of the article, or as to the origin of any other article with which such imported material is usually combined subsequent to importation but before delivery to an ultimate purchaser. Now this was stated to be for the purpose of preventing deception. In the case, for instance, of glass bottles imported from France marked with the word "France" and after importation filled with a cheap perfume and sold to the public, the marking on the bottle carried with it the idea to the public that the perfume itself originated in France. Now, we have no criticism to make if this proposed provision had no greater scope than that. However, there are articles manufactured in the United States from imported material, cases where a new article with a new name and character or use is produced. In some of those articles the imported material is visible.

Now, for instance, you bring in bristles to make a brush. Of course it would be impossible to mark the bristles, but you bring in cloth and make a suit of clothes, you bring in many other articles and manufacture entirely new articles in the United States. Now, I see no reason why a manufacturer in the United States of an article from imported material should be required to mark the imported material with the country of origin in such a way that that marking appears on an article made in the United States from such material. Certain manufacturers would be placed at a serious disadvantage with respect to other manufacturers.

For instance, suppose a chemical were imported from a foreign country, the container is marked with the country of origin, that chemical is manufactured into some new article in this country. The imported material does not appear in the new article in such a way that it could possibly bear the mark, so that this article would be sold as an article, as it properly should be, of American manufacture. On the other hand, the manufacturer who brings into the country material that is not lost in the production of a new article would have to go before the public with a marking to indicate that he did import his material from this, that, or the other country. Now, there has never been any requirement, where an article has been made in the United States with American labor, with the investment of American capital, that the public should be informed as to where the individual materials came from that entered into the manufacture of that article.

So that if it is the purpose of the Treasury Department merely to apply this to cases where the imported article retains its identity, even though it may be incorporated or combined with some other article in this country, we see no objecton to it, whatever, but we believe it should be limited and should be limited by language something on the following order, which should be placed at the end of line 2 on page 3:

Provided, That this subdivision shall not be applicable where there is produced in the United States with the use of the imported article a manufactured article having a new name, character, or use.

Now, turning to section 7, that appears on page 10 and is directed to an amendment of section 402 of the present tariff act: The amendment that is proposed meets the decision of the court that in finding foreign value, sales to foreign countries other than the United States should be taken into consideration, and this limits the definition of foreign value to sales for home consumption. We see no objection whatever to that provision. However, this "value" section, in our judgment, should be subjected to further amendment. We have in the law now an alternative value, that is foreign value or export value, whichever is the higher of the two. The result of that is considerable delay in the appraisement of merchandise and it imposes quite a burden upon an importer not only in entering his merchandise but in challenging any return of the appraiser. That is for this reason: The importer must know two values. He must know a foreign value, and if this amendment suggested is adopted that foreign value would be the sales in the home market for home consumption. Now the importer is concerned only with the price at which the merchandise is sold for export to the United States, but that would not be sufficient; he must know the home value in addition, because the home value might be higher. At least, he has got to determine that at the time

he makes his entry, because if he should enter it on the price he paid, which was a freely offered export price, and if it should develop that there was a freely offered price for home consumption which was higher, he would have an advance in his entered value and be subjected to the additional duty or penalty of 1 percent for each 1 percent of advance.

Now we believe that foreign value should be made the first value, with the suggested amendment of the Treasury Department, that is the price at which the merchandise is freely offered for sale to all buyers in the home market for home consumption at the primary value. If no such value exists by reason of a restricted market, or perhaps the goods are not sold in the same condition in the home market as they are for export, then the export value, following the present definition of export value, and if no home value, no export value, then United States value, with something of a modification of the existing definition of United States value. If no foreign value, export value, or United States value, then cost of production. Now that is the order in which we proceed now, under the existing law, with the exception that of the first two values that I mentioned, foreign value and export value, you must take the higher of the two.

Now United States value is a theoretical foreign value. It is only applied where there are no sales, no freely offered prices in the home market, or for export. It is the price at which similar merchandise, the same or similar merchandise is sold in the United States, with certain deductions. You are permitted to deduct the freight and insurance, the duty and profit, and general expenses. Now, that, of course, works back to a theoretical foreign value, but the objection that we have to that definition is the fact that the deductions for general expenses and profit are limited to 8 and 8. That is, 8 percent for general expenses and 8 percent for profit. Regardless of what the man's overhead may be, the general expenses for doing business, today, in the city of New York, he can only deduct from his selling price a part of a factor that entered into that selling price. His general expenses might be 18 percent, but he can deduct 8 percent. Now his general expenses are made up of his pay roll, his rent, so that he pays a duty, in part, in United States value on the wages he pays to American workmen. We believe that the same, practically the same, definition should be used, that is the same theory, with respect to United States value that the Congress has for so many years provided with respect to cost of production.

Senator WALSH. Did you present this argument to the House committee?

Mr. BEVANS. Yes, Senator, but we were allowed 15 minutes on the whole bill before the House committee and of course we could not go very far into it.

Senator WALSH. They had before them this language?

Mr. BEVANS. Yes. The language is practically that, I think entirely that which was suggested in the first bill, the Treasury Department bill. The Treasury Department did not go into what I am going into now.

Now, in cost of production we build up a value, a theoretical value, by deducting the cost of material, direct labor, general expenses, and profit, but as to general expenses it provides the usual general expenses with a minimum of 10 percent. As to profit, it provides the

profit which is usual, which is usually added by manufacturers and producers of the same class of merchandise, with the minimum of 8 percent. Now, in finding a theoretical value, if you can provide for the actual general expenses and the real profit, I see no reason why, in providing a theoretical value by breaking down a price, we cannot follow the same procedure, and there would be no more difficulty in that case, that is, in the case of the United States' value than there would be in the cost of production, and we followed that cost of production definition for a great many years.

Now there is one other part of section 402 that I would like to briefly mention, and that is the definition of American selling price. That is in the present law, Senator. The present law, after defining "American selling price," the price at which the merchandise is freely offered for sale, and so forth—

> or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

Senator WALSH. You are now quoting the present law?

Mr. BEVANS. Yes.

Senator WALSH. And you recommend that to be modified or changed?

Mr. BEVANS. To be modified; yes.

Senator WALSH. Other than is proposed by the Treasury in this bill?

Mr. BEVANS. Yes, Senator.

Senator WALSH. Very well.

Mr. BEVANS. Now, this American selling price, of course, is applied in cases where the President has shifted the basis of value under the flexible provision, section 336, and it is also applied under the two paragraphs dealing with coal-tar products and dyes. Now it is very difficult to understand how you could find a value where a manufacturer of a similar product in this country has not offered it for sale, has not made any sales at all, but the price that he would have received or was willing to receive if he had offered it for sale. Now, no importer should be confronted with any such definition as that.

The appellate court, United States Court of Customs and Patent Appeals, in the *Kuttroff-Pickard & Co., Inc.*, v. *United States* (14 Ct. Cust. Appls. 341), with respect to that language, said:

> Just how the appraising officials are to determine how much the American producer would have received, or how much he was willing to receive, is not suggested in the statute.

That language, that part of the definition of the American selling price, should be stricken out. It is absolutely impossible to proceed under it. In such cases as we have had, the court has been all over the law and has not been able to arrive at any real conclusion. Of course, a man will say, "Well, if I had offered this for sale I would have been willing to receive $5 for it," but, as a matter of fact, perhaps if he had offered it for sale he could not have gotten $2 for it.

Senator WALSH. Are you finished with that section?

Mr. BEVANS. That is section 402; yes, sir.

Senator WALSH. May I ask you to suspend a moment?

Mr. BEVANS. Yes, sir.

Senator WALSH. A Representative from the House is present, Representative Coffee. How long would you take?

Representative COFFEE. About 6 minutes, Senator.

Senator WALSH. Mr. Bevans, you have the right of the floor. You do not need to suspend if you do not wish to.

Mr. BEVANS. No, no; that is all right.

Representative COFFEE. I appreciate the privilege very much. Thank you, Senator, for the privilege.

STATEMENT OF HON. JOHN M. COFFEE, REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Representative COFFEE. I wish to direct attention to section 3 of H. R. 8099, which proposes the substantial revision of section 304 of the Tariff Act of 1930. This section is the provision of law which requires country-of-origin marking on imported articles.

The present statute which mandatorily provides that the Secretary of the Treasury may except articles from the requirement of marking under four circumstances. These are:

1. If the article is incapable of being marked.
2. If marking would injure the article.
3. If the cost of marking would be prohibitive of importation.
4. If marking of the immediate container would reasonably indicate the origin of the article.

These provisions for exception from the marking requirement, it will be noted, are merely permissive. The Secretary of the Treasury may, if any one of the enumerated circumstances exist, except imported articles from the requirement.

It is well known that large quantities of lumber are imported into the United States. In 1936 the quantity was approximately 655 million board feet. That you may have a comprehension of the quantity of lumber imported in disregard of the marking statute, may I call attention to the fact that 655 million board feet of lumber means a displacement of more than 17½ million man-hours of American labor in our sawmills and planing mills? To transport this quantity of lumber would take 33 thousand railroad cars. Without allowing for engines and cabooses, it would take a train approximately 250 miles long to transport all of this lumber.

Strangely, all of this lumber was entered into the United States by the Secretary of the Treasury without country-of-origin marking. The law requires marking, as I have said, unless the imported article has been excepted. Lumber has not been excepted, yet this tremendous quantity has been permitted by the Secretary of the Treasury to enter the United States in clear disregard of the statutory provision.

This matter has been called to his attention repeatedly, I understand. The lumber manufacturers and the workers in the lumber industry have been petitioning the Secretary to do something about it for the past 2 years. The only response that has been made is that the matter is being studied. No justification or excuse has been offered for the disregard for the past 7½ years of the mandatory statutory provision. What is more, no excuse can be offered. Lumber does not and reasonably cannot be said to fall within any of the exceptions provided in the statute. It is capable of being marked, marking does not injure it, the cost of marking is not prohibitive, and it is not ordinarily imported in containers.

As to the first of these exceptions, it is reported that more than 50 percent of the lumber produced in the United States is currently being marked with grade or trade-marks. As to lumber exported from the United States, practically all of it is being marked in some way to identify it in the manner required by steamship operators so that different parcels may be distinguished.

Most imported lumber comes from Canada. Canada also exports very large quantities of lumber to England. Evidence has been presented to the Treasury Department, I understand, in the form of a report from the United States Department of Commerce, that practically all Canadian lumber going to England is customarily marked.

In other words, Canada is willing to mark the lumber when it is shipped to the mother country, not when it is shipped to the United States, nor do our customs officials require it to be marked. Yet these same exporters who marked the lumber they shipped to the United Kingdom do not mark lumber they ship to the United States. Obviously such extensive marking of domestic lumber and of lumber exported to other markets, disposes also of the second and third exceptions from the requirement. If marking injured lumber, such large quantities would not be marked. Nor would there be such marking if the cost was prohibitive. As to this latter feature, I am informed that evidence was presented to the Treasury Department showing the cost of marking over more than 784 million board feet of lumber by 19 manufacturers in Washington and Oregon. The highest cost of marking reported was 10 cents a thousand board feet; the lowest approximately one-half cent per board foot; the average on the entire amount was 2.67 cents per thousand board feet. This cost should be compared to an average value of the lumber of approximately $20 per thousand board feet. The cost is, therefore, considerably less than 1 percent of the value of the lumber in every case. Certainly such a cost cannot be said to be prohibitive.

Senator WALSH. Do we ship any lumber to Canada?

Representative COFFEE. Practically none.

Senator WALSH. Does it have to be marked?

Representative COFFEE. Yes; it has got to be marked going into Canada. I do not know whether it is in the law, Senator, but it is customarily done; it is always done. I do not know what the law is as to that.

Senator WALSH. I think that might be important for you to know, in view of your argument.

Representative COFFEE. Yes; I will check on that.

There are two reasons why it is important that imported lumber be marked to indicate the country of origin. The first reason is the obvious reason for the requirement of country of origin marking on all articles; that is, to inform American consumers of the foreign origin of the commodities which they purchase. A second, and probably even more important reason at this time, is the requirement that only articles of domestic origin be purchased for Federal Government use, and a similar requirement in the United States Housing Act last year, that housing authorities buy only materials of domestic origin in constructing public housing. In the absence of country of origin, there is no way Government purchasing officers and housing officials can be assured that the lumber which they purchase is of domestic origin. Imported and domestic lumber cannot be distinguished in the absence of marking.

I understand that instances have been reported where imported lumber was accepted by Government purchasing officials who could not definitely distinguish the imported lumber as such, although there was collateral evidence to indicate such origin. In other words, it has been held unless they can tell from actual examination, despite the fact there is collateral evidence otherwise, they cannot disregard the showing. There is prima facie evidence it is domestic lumber. It is assumed until it is proven otherwise.

This proposed bill, H. R. 8099, in section 3 has a provision which would legalize the past disregard by the Treasury Department, of the mandatory nature of the marking statute. It is subsection (j) of section 3 which would do this. Under that section the Secretary of the Treasury would be authorized at any time within 3 years after July 1, 1937, to issue an order permanently exempting from the requirement of marking any article which was imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, without being required to be marked as the statute provides. While lumber is not mentioned in this provision, there is no question but that the provision would apply to lumber. Lumber entered in substantial quantities in the 5 years preceding January 1, 1937, it was not required by the Secretary of the Treasury to be marked during such period. Therefore, if this provision is enacted, the Secretary of the Treasury would be authorized to make an exception for lumber marking. Officials of the Bureau of Customs have indicated that if this amendment is passed, the marking of lumber will not be required.

There may be some justification for this provision. I cannot conceive it. But if there is, it should be amended to specifically exclude lumber and timber products from its operation. This might be done by adding at the end of the subsection the sentence, "This provision shall not apply to lumber and timber products."

When the bill was before the House last August, it was passed in the closing days of the session, under a suspension of the rules. The nature of this provision and its application to lumber was called to the attention of the chairman of the Ways and Means Committee in charge of the bill—Representative Cullen of New York. He engaged at that time, with several members of the House, to seek an amendment of the nature of the one I have just suggested. May I respectfully urge that this committee incorporate such an amendment before the bill is reported to the Senate. That is the position, I am sure, that is taken by the two Senators representing the State of Washington.

Senator WALSH. Would you like to have subsection (*j*) stricken from the bill?

Representative COFFEE. Yes, Senator.

Senator VANDENBERG. Merely striking from the bill would not achieve your purpose.

Representative COFFEE. Well, it might not achieve the same purpose; but the main thing is to have an exception, if subsection (j) is retained in the bill. There may be reasons otherwise why it would be retained; I do not know; there may be reasons in the mind of the collector of customs.

Gentlemen, this means a great deal to the Pacific Northwest. At least 158 organizations in my home town alone, in 2 days, sent wires and resolutions on it. The lumber industry has now dropped to the point of 20 percent of production, and more than 150,000 men are out of employment in western Washington and Oregon alone.

Senator WALSH. You are not speaking of lumber alone; you are speaking of timber products too?

Representative COFFEE. Yes; timber products and lumber.

Senator WALSH. Shingles are not marked?

Representative COFFEE. No. You understand I am a Democrat but practically all lumber operators are Republicans. I am thinking, just as you gentlemen are, of the best interests of the business and workingmen of the country.

Senator VANDENBERG. You mean the Democrats can go broke as well as the Republicans under this present regime?

Representative COFFEE. Yes; absolutely. It is possible to have business conditions which are divorced from political considerations. That is peculiarly true in this country as in many others where there is business affected. The employees in this industry and the employers are a unit in requesting this single exception as an amendment to this subsection (j), to add the phrase, "excepting lumber from the provisions."

Senator VANDENBERG. I do not see where you would be any better off than you are now. If you struck out subsection (j) I think you are still at the mercy of the Secretary.

Representative COFFEE. Yes; that is right. It is a permissive privilege. But the danger of retaining this subsection (j) is that it will have the pernicious effect of ratifying, confirming, and blessing the Treasury Secretary's failure heretofore to enforce the law requiring that lumber imports must be plainly marked with the designation of country of origin. He is supposed to require that lumber be marked, and he may issue an order exempting lumber from the marking requirement of being marked with the country of origin providing it falls in one of the four categories that he had by form of finding or adjudication. He has not done that yet, he has not required that the lumber be marked. That makes a tremendous difference in this country, because they can openly sell this lumber ostensibly as American lumber.

I do not want to take any more of your time. I appreciate your courtesy and I thank the gentleman upon whose time I trespassed.

STATEMENT OF JAMES W. BEVANS—Continued

Senator WALSH. What next section, Mr. Bevans, would you like to take up?

Mr. BEVANS. The next is section 15 on page 1[illegible], which is directed to an amendment of section 516 of the present Tariff Act. We are very much in favor of the adoption of the proposed amendment to section 516. This is the domestic manufacturers' protest section. I think it was first written into the Tariff Act in 1922, giving a domestic manufacturer or wholesaler the right to litigate the amount of duty to be paid by an importer. Of course, the procedure is to go to the Secretary of the Treasury and inform the Secretary that the domestic manufacturer or wholesaler thinks that the proper rate is not being assessed or the proper value.

Senator WALSH. I think we are familiar with that question. So far as the evidence that has already been presented here is concerned, it seems to indicate unanimity of sentiment in favor of it.

Mr. BEVANS. Yes. I should not have done any more than to have said we heartily endorse it were I not anticipating some objection that

you are going to have tomorrow, probably. I will pass it. We think it should be adopted.

Senator WALSH. Very good.

Mr. BEVANS. Section 16 on page 21, paragraph (1) under subdivision (a). We believe an amendment should be made omitting the words "as duties," and in paragraph (2) by omitting in line 23 the words "and taxes." Now, that language was used to harmonize with the new section 528 which is suggested under section 18 of this bill. Before I get to section 528, there is another part of this amendment to section 520 that I would like to refer to, and that is subdivision (3) which is entitled "Fines, Penalties, and Forfeitures."

Senator WALSH. What change do you suggest there?

Mr. BEVANS. We object to the moneys that are deposited by the importers as fines, penalties, and forfeitures being put immediately into the Treasury Department; that is, into the Treasury, rather. Under present practice you may pay a fine, penalty, or forfeiture, it is assessed by the collector and he puts it into a special deposit, so when you apply to the Secretary of the Treasury under the authority that he might have to mitigate the fines, penalty, or forfeiture, and if you are successful then this money is refunded to you immediately. Now formerly, under the former practice, that is, the former handling of appropriations, we would have seen no objections to this whatever. For a great many years we had a permanent indefinite appropriation for paying refunds found due under the decisions of the court, or excess of deposits made at the time of entry. I think it was in 1933 that that was repealed and every year now we have a yearly appropriation, and in order to estimate that appropriation the various collectors are called upon to guess at how much money they are going to need for the coming year under the decisions of the court not yet rendered or proposed suits not yet started. The result is that if a case ever occurs where they have the actual amount needed it is a pure accident. So that we have been confronted with this situation—that before the end of the fiscal year the money appropriated has become exhausted and we have to wait for a deficiency appropriation of Congress.

How a lot of these refunds are made of what we call excess deposits. At the time of entry the importer deposits a certain amount of money, he does not know whether it is a correct amount, and neither does the collector, because it is predicated upon the invoice description of the merchandise which has not been examined by the appraising officers. So when the entry is liquidated if the actual duty should be less than the amount deposited he is given a refund. Now he gets no interest on that, nor does he get any interest on the moneys refunded because of the decision of the court when it holds that the correct rate of duty has not been applied.

So we believe that that indefinite appropriation and that method of dealing with refunds should be restored and that we should not have to depend upon a guess work appropriation every year, but if we are going to continue with these specific yearly appropriations we want the present law and practice with respect to fine, penalties, and forfeitures left as it is. In other words, we want our money to go into a special deposit account where we can get it, and not have to wait until after it is appropriated. It is our money.

Now, I will go to section 18 on page 23. This is a new section, and what it proposes is wherever Congress assesses a duty against imported merchandise in a revenue bill and calls it a tax, an internal-revenue tax, that we may not proceed to litigate that in the same way that we would litigate a duty.

Senator WALSH. This section, as you probably know, the Treasury states was incorporated to set aside or overcome a decision of the customs court. You know that, do you?

Mr. BEVANS. I do not, Senator.

Senator WALSH. That is their representation.

Mr. BEVANS. I do not, because this has been the law for 100 years.

Senator WALSH. What they propose now is a change, is it not?

Mr. BEVANS. Yes; it is a change; and it is the most objectionable provision that they have put in this bill, so far as the importer is concerned.

Senator WALSH. I want to read you the Treasury's statement.

Mr. BEVANS. Yes.

Senator WALSH (reading):

> The purpose of this section is to overcome decisions of the customs court holding internal-revenue taxes levied on imports under internal-revenue laws to be customs duties within the purview of exemption and preference provisions of the customs laws.

I am just calling attention to what they are claiming to be the reason. You may continue with your statement.

Mr. BEVANS. This would be the effect of this provision: The United States Customs Court, the United States Court of Customs and Patent Appeals could be divested of their jurisdiction merely by Congress calling a duty an internal-revenue tax. Now it is ridiculous to say that any assessment, any tax assessed against imported merchandise that must be paid before that merchandise can be brought across the border and be brought within the limits of the United States, is an internal-revenue tax. A statement was made, in reporting this bill to the House, that this provision did not curtail in any respects the jurisdiction of the United States Customs Court. I do not know what that is based on, I do not know where it originated, but I challenge it in its entirety. The United States Customs Court has by many decisions passed upon taxes called internal-revenue taxes that were assessed against imported merchandise, and the guide has been this, the rule has been this, that if the tax assessed must be paid before the imported merchandise can enter the commerce of the United States it is a duty, and that is supported by lots of decisions of the Supreme Court of the United States, going back 100 years. Now, I do not know what the Treasury Department has in mind, but I do know the effect of this provision.

Senator WALSH. Mr. Spingarn, what is that decision?

Mr. SPINGARN. *Marion A. Schwing* v. *United States*. (T. D. 47530, decided by the U. S. Customs Court on February 15, 1935.)

Senator WALSH. Are you familiar with that decision?

Mr. BEVANS. Yes. That does not mean anything now, because the quantity of spirits that a man can bring back from abroad has been specifically limited, and even if it did, there would be no reason for imposing this on us.

Senator WALSH. I just wanted to know whether you knew that there was a decision on it.

Mr. BEVANS. Yes. This is the way it would result: Congress, in an internal-revenue bill, assesses internal-revenue taxes on a domestic article, and in order to compensate for that they assess a corresponding amount on an imported article. They call that an internal-revenue tax. The importer, in protesting the duty assessed on his merchandise, would go to the United States Customs Court to litigate a part of his duty, and would go to the internal revenue and proceed under that practice to litigate for another part.

Now, the Supreme Court has said that the system that Congress has created looking toward refunds of customs and refunds of internal-revenue taxes are systems of corrected justice and each is supposed to be complete in itself.

Now here is another aspect of it that probably has not been considered by the Treasury Department, and that is this: A great deal of our merchandise is assessed duty on United States value. I said that before. That is the selling price with certain deductions. Now you can deduct your duty. If Congress calls this an internal-revenue tax, by so calling it is taken out of the category of duties and then, when you find your value, you cannot deduct that and the result is you would be paying your duty on a duty.

The Department probably overlooks the fact too that in defining the jurisdiction of our Customs Court of Appeals and depriving the courts of the former jurisdiction those courts had, the Congress did not say "duties", they said "cases involving revenue from imports." Now certainly any assessment against imported merchandise is a revenue from imports, and it makes no difference what Congress calls it, you cannot change the nature of a tax, and the court has so held, by calling it an internal-revenue tax.

We object to that provision. We think it should not be in this bill. It is going to cause a lot of hardship, a lot of trouble, and a lot of expense to the importers.

Those are the important sections of the bill. We approve the proposed amendment to section 314, paragraph 1615—that is section 30, page 35. We think that is a very desirable change. I will not take up any more of the time of the committee on that.

Senator WALSH. Thank you.

Mr. BEVANS. Now, Senator, I have gone into this much more elaborately in a brief I have prepared. I would like to file it at the same time.

Senator WALSH. I see no objection to that. We are desirous of getting in everything possible to improve the present law. I think the Treasury Department is also desirous of getting all possible information that would be helpful.

Mr. BEVANS. I think that is undoubtedly correct. Senator, I had asked your committee if I might not, as counsel appearing in behalf of several importers, address myself to one single section of the bill? It would take about 5 minutes.

Senator WALSH. Very well, sir.

Mr. BEVANS. This is an amendment to paragraph 1111.

Senator WALSH. Section 29, page 35?

Mr. BEVANS. Yes.

Senator WALSH. That is the only provision in this bill that indirectly seeks to accomplish the objective of changing a tariff duty.

Mr. BEVANS. Yes.

Senator WALSH. And it is justified by the Ways and Means Committee who desire that there shall be no duties incorporated in this bill, on the claim that it is to correct a decision of the Customs Court that is contrary, or was contrary to the intent of Congress in the tariff law.

Mr. BEVANS. Yes; I understand that.

Senator WALSH. I think another such amendment was to be presented to the committee tomorrow, dealing with felt hats.

Mr. BEVANS. Yes.

Senator WALSH. So that up to the present time the committee has desired to confine itself only to the consideration of the possibility of correcting an improper classification by decisions of the courts under the tariff law.

Mr. BEVANS. Yes. That is this section 1111. That falls within that category.

Senator WALSH. Yes.

Mr. BEVANS. I am impressed with the fact that the intent that is stated, that is to be carried out by this amendment, was apparently the intent of the Congress that enacted the Tariff Act of 1930, and of course that was a high-protection Congress, and, as you know, we made many fights against the high rates. It is not the intent of this Democratic Congress, or a Democratic Congress, rather, but a high-protection Congress. Now this is the effect of that, and I will be very brief.

Senator WALSH. I wish you would.

Mr. BEVANS. The paragraph provided for various articles made of blanketing. The court held that certain articles that were not in the form of blanketing before they were made into the particular article were not articles made of blanketing. In other words, the blanketing had to exist before.

Now, that carried in these articles steamer rugs, carriage and automobile robes, and other rugs, at a duty of 50 percent, and 50 percent is a sizeable rate of duty. This brings it back by removing the word "blanketing," and in this broad paragraph it would raise this duty to as high as an equivalent ad valorem duty of 96 percent. The cheaper the rug is the higher the ad valorem duty.

Senator WALSH. Let me see if I have this correct. The Customs Bureau's regulations placed steamer rugs under this general section, and when an appeal was taken to the customs court steamer rugs were said to be something other than a blanketing and were put in a different paragraph, is that right?

Mr. BEVANS. Yes, substantially. The appellate court said that these rugs were not make of blanketing.

Senator WALSH. In other words, steamer rugs got, because of the decision of the court, a lower duty than they did under the administration of the Customs Bureau.

Mr. BEVANS. Yes, because the Customs Bureau was assessing these steamer rugs as of blanketing. The appellate court very rightly said the Congress limited itself to rugs made of blanketing, and these are not made of blanketing.

The effect of it, as I said, would be this: You take a steamer rug having $1.50 foreign value, the duty would be $1.44, which is equivalent to 94 percent on foreign value. A rug of the same weight but of a finer quality having an apparent value of $5 would pay $3.20 duty,

which is an ad valorem equivalent to 64 percent. Therefore the cheaper the rug the higher the ad valorem duty. The man with a limited income and wants something to cover himself with in his automobile has to pay 94 percent, while the wealthier citizen pays only 64 percent.

Here is something else that probably has not occurred to those who proposed this. If you take out the words "of blanketing" you bring in steamer rugs, automobile robes, or any of the articles that are eo nomine provided for in that paragraph into that paragraph if of chief value of wool, regardless of how they are made.

Now you have provisions in the wool schedules for articles made of cut pile fabrics carrying higher rates than section 1111. You have also knitted articles, articles of knitted material carrying higher rates. As to those articles you would have a substantial reduction of duty, and as to these rugs of chief value of wool, not knit or cut pile, or knitted material you would have an excessive rate of duty. We think that this should not be incorporated in the bill. I thank you very much.

(The brief submitted by Mr. Bevans follows:)

MEMORANDUM IN BEHALF OF THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, INC., RE H. R. 8099

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

SIR: The National Council of American Importers and Traders, Inc., of New York, has, through its customs committee, carefully considered the proposed amendments to certain administrative provisions of the Tariff Act of 1930, as embodied in H. R. 8099. The council has a large membership composed of American wholesale and retail merchants located throughout the United States, who are either directly engaged in importing merchandise or deal in such merchandise.

Some of the proposed amendments remove many of the unnecessary restrictions that have been so irksome to those engaged in the importation of merchandise from foreign countries. However, certain of the proposed changes to other sections of the administrative law would, it is believed, complicate the present procedure and tend to increase the hazards of importation.

The removal of the tariff barriers created by administrative provisions of the Tariff Act of 1930 is entirely in line with the fine work being done by the State Department to restore our international trade, and is heartily endorsed by this association. Many of the proposed amendments, as stated, being in furtherance of this purpose, we believe that certain of the proposals should be amended in order to afford the relief apparently intended by the Treasury Department, and also to remove uncertainties as to interpretation.

We suggest that if it is proposed at this time to make an extensive amendment of the present administrative law, as that contemplated by H. R. 8099, the entire administrative law should be considered as there are a number of sections, not covered by this bill, that should receive attention.

This council, after considerable work on the part of its customs committee, submitted to the Treasury Department suggested changes in the special and administrative provisions of the Tariff Act of 1930. Apparently little, if any, consideration was given to the suggestions made, except as to section 516. We are submitting these suggestions herewith and earnestly request that the committee give consideration thereto in connection with the proposals on H. R. 8099.

We will consider the various amendments in which the council is interested in the order in which the sections appear in H. R. 8099:

Section 3 (amending sec. 304 of the Tariff Act of 1930): This amendment is directed to the existing law requiring the marking of imported articles to indicate the country of origin. When the proposed amendments were before the Committee on Ways and Means of the House of Representatives, we suggested that the word "conspicuous" should be inserted in the proposed amendment in order to follow the language of the present law. We objected to the proposal to give the

Secretary of the Treasury discretion as to the place of marking. We note that the word "conspicuous" has been restored in paragraph (a) but that subdivision (1) of this paragraph gives to the Secretary of the Treasury the right to prescribe the place on the article where the mark shall appear. Thus, the restoration of the word "conspicuous" to its place in paragraph (a) does not meet the objection raised.

The word "conspicuous" has appeared in the marking law for many years and has been interpreted by the court, and there is no uncertainty as to the meaning of the term. We think that this is better than to leave the question of the place of marking to an administrative officer. When the administration changes, as it does from time to time, there may be different ideas as to where the marking shall appear on a particular article. So long as it is in a conspicuous place, that is all that the law should require. The same objection is made to giving authority to the Secretary of the Treasury to determine the character of words and abbreviations thereof which shall be acceptable as indicating the country of origin.

We refer to a recent case as illustrating the uncertainty that is apt to arise where the Secretary of the Treasury is given authority to prescribe the character of marking. An importation of merchandise was made from Burma and the containers were marked "Produce of Burma." The Treasury Department, however, had issued a decision holding that articles from Burma and their containers must be marked "British India," and this notwithstanding the fact that the law requires only that the article should be marked to indicate the country of origin and that Burma is one of the oldest countries, having been settled from 2,000 to 3,500 years ago.

Further, while such marking was required, articles originating in Ireland or Scotland were required to be marked "Ireland" and "Scotland." The importer in this case was, therefore, penalized 10 percent of the value of the merchandise. On March 13, 1937, the Treasury Department changed its practice and directed that merchandise from Burma must be marked "Burma" and not "British India." This change in practice, however, came too late to relieve the importer from the payment of a penalty of $307.

Subdivision 2 of paragraph (a) gives the Secretary authority to require the addition of any other words or symbols which, in his opinion, may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser. So far as this provision might apply to bottles or containers which are used in the condition in which imported to hold merchandise produced in the United States (and this was stated by Treasury Department officials to be its purpose) we can see no objection to it. However, if it should extend beyond that, there are decided objections to it.

Many materials are imported for further manufacture in this country. Many of these materials cannot be seen in the completed article. The importer or the manufacturer would be under no necessity to indicate to the public that his article was made of imported materials. However, if there were any portion of the imported material visible in the manufactured article, under this proposed amendment the Secretary could require it to retain the name of the country of origin, which would confuse the consuming public and would be an unnecessary requirement against the manufacturer in this country of a new article with a new name, character, or use.

For example, a suit of clothes is manufactured in the United States from imported woolen cloth. The cloth is visible in the completed article and there is no change in its character, that is, its weave, etc. On the other hand, articles are made in this country from imported chemicals or metals which are combined with other chemicals or metals. Brushes are made from imported bristles and brooms from imported fiber.

If this paragraph were interpreted to apply to articles of an entirely different class from bottles or other containers, we might have the situation of any manufacturer producing an article, in which the imported material was visible, being compelled to have the material in such completed article marked to show that it came from a foreign country; while other manufacturers, in whose products the imported materials were not visible, would not have such requirement imposed.

Where a new article is manufactured in the United States with a new name and a new use, produced by American labor and American machinery, and with the investment of American capital, certainly there is no justification for having the imported material so marked that the marking may appear in the completed article.

The Supreme Court, in *Tide Water Oil Co.* v. *United States* (171 U. S. 210), stated:

"Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the finished product. Thus logs are first manufactured into boards, planks, joists, scantlings, and so forth, then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings, and a thousand and one articles manufactured wholly or in part of wood.

"The steel spring of a watch is made ultimately from iron ore but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture and for which the article so manufactured receives a different name.

"The material of which each manufacture is formed * * * is not necessarily the original raw material * * * but the product of a prior manufacture, the finished product of one manufacture thus becoming the material of the next in rank."

We think that the proper line of demarcation should be between a combination of the imported articles with a domestic article where the imported articles are used without change and without the manufacture of new articles with new names or uses.

It is true that in the proposed amendment the word "combined" is used but we think that it should definitely appear that the word "combined" is not intended to include a manufactured article. We believe that this limitation could be made by adding, after the semicolon, at the end of line 2, page 3, the following:

"*Provided*, That this subdivision shall not be applicable where there is produced in the United States, with the use of the imported article, a manufactured article having a new name, character, or use."

Section 7 (amending sec. 402 of the Tariff Act of 1930): We perceive no objection to limiting foreign value to sales for home consumption. We believe, however, that this section should be further amended to eliminate the provision that either foreign value or export value should be adopted as the first basis of appraisement, depending upon the higher of the two values. This causes considerable delay and confusion because the appraising officer must ascertain whether there is both a foreign value and an export value and the amount of each in order to determine which is the higher. It is suggested that subdivision (a) should be amended to read as follows:

"(a) *Basis.*—For the purpose of this Act the value of imported merchandise shall be—

"(1) The foreign value;

"(2) If the appraiser determines that foreign value can not be satisfactorily ascertained, then the export value;

"(3) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

"(4) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

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

Subdivision (e) should be amended to read as follows:

"(e) *United States value.*—The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from place of shipment to place of delivery, a commission not exceeding 10 per centum, if any has been paid or contracted to be paid, and an allowance for actual expenses on goods secured otherwise than by purchase, or profits which ordinarily are realized in the sale of merchandise of the same general character as the particular merchandise under appraisement, and an allowance for actual expenses on purchased goods."

No reason is perceived why (in finding a theoretical foreign value, by taking the selling price in the United States and working back) an importer should pay duty on a value that includes a part of his profits and general expenses. The present allowance of 8 percent and 8 percent is an arbitrary one, and it is common knowledge that in practically all lines of business the overhead or general expenses exceed 8 percent. Likewise the profits exceed 8 percent, except possibly where

merchandise is handled in bulk, that is, commodities such as wheat, sugar, and the like.

There should be no difficulty in proceeding under this definition of United States value for the reason that the fourth value provided, that is, cost of production, considers the usual profit. In finding cost of production, a value is built up, there being considered first the cost of materials, fabrication, and manipulation, then the general expenses in the case of such or similar merchandise, and an addition for profit "equal to the profit which ordinarily is added in the case of merchandise of the same general character as the particular merchandise under consideration." United States value is formed by deducting the same factors that are added in the case of the cost-of-production value. Therefore, no reason is perceived for a different rule with respect to general expenses and profit.

The definition of American selling price should be further amended by striking out the following language: "or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article."

Where American selling price is the basis of appraisement, the importer's merchandise is to all intents and purposes appraised on the value of someone else's property, that is, the value of a like or similar article made by a domestic manufacturer. The fair evidence of the value of an article is the price at which it is freely offered for sale. Obviously the price that a man would be willing to receive for his merchandise is no indication of the market value of such merchandise. If an article made in the United States has not been sold or offered for sale, the price that the man would be willing to receive is not a fair means of determining market value. In such a case, the domestic manufacturer says that he did not sell it or offer it for sale but if he had offered it for sale, he would have been willing to receive a certain amount. Thus, the law places within the hands of the domestic manufacturer the power to embargo imports. The courts have had considerable difficulty with this language.

In *Kuttroff-Pickhardt & Co., Inc.* v. *United States* (14 Ct. Cust. Appls. 381), the court stated with respect to this language:

"Just how the appraising officials are to determine how much the American producer 'would have received' or how much he was 'willing to receive' is not suggested in the statute."

We think that this language should be omitted so as to bring this value definition in accord with other value definitions in section 402, that is, foreign value, export value, and United States value.

Section 15 (amending sec. 516 of the Tariff Act of 1930): The council heartily endorses the proposed amendment to subdivision (b) of section 516 of the Tariff Act of 1930. The Tariff Act of 1922 gave to American manufacturers, producers, or wholesalers a most novel and unusual right, namely, to litigate the amount of tax imposed as a customs duty and the dutiable value of imported merchandise, where such value and the rate of duty (after complete review by the Secretary of the Treasury) had been held to be correct.

To permit a third party to challenge the amount of tax assessed on the taxpayer by the Government was, indeed, an innovation. This imposed a real hardship on the importer, because not only did the Government have to be satisfied as to the dutiable value of the imported merchandise and the rate of duty but any manufacturer, producer, or wholesaler (engaged in manufacturing or selling merchandise of the same class) could indicate his dissatisfaction with the decision of the Secretary and force the importer into litigation.

The statute imposed a further hardship by providing that the liquidation of entries should be suspended awaiting the outcome of the case in court. Thus, the importer, if he continued in business, would be faced with an uncertainty as to the amount of money that he might eventually have to pay. This has been a most unfair procedure to the importer. If the collector of customs (in the case of the rate of duty) and the appraiser (as to value) were satisfied, and upon a review by the Legal Department of the Treasury Department, that Department was likewise satisfied, that the merchandise was being appraised at the proper value and the correct duty imposed by the tariff act was being assessed, why should the importer be subjected to suspension of liquidation of his entries while a domestic manufacturer, producer, or wholesaler challenged the correctness of the decision of the Secretary of the Treasury?

There will undoubtedly be considerable opposition on the part of American manufacturers to the proposed amendment to section 516, which, if enacted into law, will apply a decision of the court, in the event such decision reverses the Secretary of the Treasury, only to importations made thereafter. If it is the

purpose only of domestic manufacturers to have the court review the decision of the Secretary of the Treasury and finally determine the value or rate of duty to be applied to the imported merchandise, and not to force the importer to face the hazard of importing for a period of 2 years or more without having any of his articles liquidated and his obligation to the Government definitely fixed, there can be no valid opposition to the proposed amendment.

The writer has had many years of experience in customs litigation and it is his belief that domestic manufacturers, in filing protests, for the most part regard the uncertainty to the importer (extending over a long period by reason of the suspension of liquidation of entries until a final decision of the court) as one of the principal, of not the principal advantage to them under section 516. Whether or not these protests are filed with the idea of benefiting from this long-extended uncertainty, this hazard to the importer is presented in every one of these protests.

I may cite a case that is now pending, in which I appear as counsel for the importer. There was no intentional delay on the part of counsel for the domestic manufacturers in this case. However, on May 20, 1935, the domestic manufacturers, complying with the provisions of section 516, wrote to the Treasury Department for the information as to the rate of duty being assessed on wool hooked rugs. The Commissioner of Customs replied to this letter on July 13, 1935, giving the information. Not being satisfied with the rate being assessed, the domestic manufacturers filed a complaint with the Treasury Department on August 9, 1935. On October 14, 1935, the Treasury Department published a decision affirming the rate of duty being assessed. On December 21, 1935, the domestic manufacturers informed the Treasury Department that they desired to file a protest. The port of Philadelphia was named, and in February 1936 an entry was liquidated at that port (covering an importation of rugs), and a protest was filed on March 27, 1936.

The case was started in Philadelphia on September 21, 1936, and transferred to New York, where it was completed by extensive testimony on February 4, 1937. A decision has been rendered by the United States Customs Court and an appeal is pending in the United States Court of Customs and Patent Appeals. It will be argued on February 8, 1938, and a decision will probably be rendered in March of this year.

The rugs involved have a wholesale selling price in the United States of 35 cents to 37 cents per square foot. The duty assessed was 40 percent under paragraph 1117 (c) of the Tariff Act of 1930. The duty contended for by the domestic manufacturers is 50 cents per square foot under paragraph 1116 (a) of the same act. It is obvious that no importer could continue importing these rugs for a period of 2 years or more and have his entries remain unliquidated subject to an increase in duty of from 40 percent ad valorem to 50 cents per square foot, which would undoubtedly put him in bankruptcy.

In all fairness to importers and in furtherance of the policy of the administration to encourage international trade by removing tariff barriers, this amendment proposed by the Secretary of the Treasury should be enacted into law. The domestic manufacturers will not be deprived of the right to challenge any rate of duty or any value in the United States Customs Court or the United States Court of Customs and Patent Appeals.

Section 16 (amending sec. 520 of the Tariff Act of 1930): We believe that paragraph (1) under subdivision (a) should be amended by omitting (line 18) the words "as duties" and paragraph (2) by omitting (line 23) the words "and taxes." Apparently these words were inserted to harmonize with the new section 528 suggested under section 18 of this bill. We will discuss that section fully and explain the reasons for the above suggested amendments to subdivisions (1) and (2).

Subdivision (3), entitled "Fines, penalties, and forefeitures": We have no objection to this provision provided the permanent and indefinite appropriation which formerly existed is continued. We do not know the reasons for the repeal of the permanent appropriation by section 2 of the Permanent Appropriation Repeal Act of 1934. We know, however, that it has caused, and we believe without any advantage to the Government, a great deal of annoyance, inconvenience, and loss to importers. It is fantastic to assume that customs officers can furnish, a year in advance, any accurate estimate as to what moneys it may be necessary to refund to importers under decisions of the courts not yet rendered and perhaps in suits not then instituted, or refunds of excess deposits in connection with entries to be made during the coming year.

One class of refunds is that of excess of deposits. At the time of entry, an importer makes a deposit to cover duties. When the entry is liquidated, it is frequently found that the amount deposited was in excess of the actual amount due. This excess is to be refunded. The money is covered into the Treasury

and to require an importer to wait for his refund until Congress makes an appropriation is the acme of unfairness.

Likewise, when the court decides that the importer has paid too much money and directs a refund, he should not be required to wait for an appropriation before his money is given back to him. He gets no interest on any money so retained by the Government, but, on the other hand, the Government is keen to get interest on unpaid taxes.

It is inevitable, under such a procedure, that the estimates made a year in advance will only coincide with the amount actually needed as a pure accident. It takes long enough to have these matters settled without waiting until funds are available. There was always a permanent indefinite appropriation for the purpose of paying these refunds. It worked satisfactorily, caused no hardship, and there was no reason for repealing it. If these appropriations are to be made from time to time by Congress, as proposed in subdivision (*b*) then we object to subdivision (3) as we prefer to have these payments made for fines, penalties, and forfeitures placed in a special account and not covered into the Treasury. If they are mitigated, the importer can receive his check promptly and will not be dependent upon an appropriation which, as stated, is decidedly unsatisfactory.

Section 18 (amending sec. 528 of the Tariff Act of 1930): We vigorously oppose this proposed section. Under decisions of the courts, including the Supreme Court, it has long been held that any assessment levied against imported merchandise which must be paid before the goods are released by the collector of customs and permitted to enter the commerce of this country, is a duty. Congress has established a system of what the Supreme Court referred to as the "system of corrective justice." Under this system, there has been established a United States Customs Court and a United States Court of Customs and Patent Appeals. These courts have functioned for years and deal with all questions of assessments against imported merchandise.

We can perceive of no reason for calling a duty a tax and thereby—under the provisions of this new section—depriving the United States Customs Court of its jurisdiction. It is true that the importer might file a claim with the Commissioner of Internal Revenue and probably get a decision after the lapse of considerable time, possibly several years. He could also eventually go to the District court but why take him out of a jurisdiction that was especially instituted to try cases involving assessments on imported merchandise. Any assessments on imported merchandise, whether they are called internal revenue taxes or customs duties, are collected by the Secretary of the Treasury, and there is no reason why there should be two distinct tribunals and two distinct procedures for settling a suit between the taxpayer and the Government where the tax is imposed against imported merchandise.

It is obviously ridiculous to say that any tax is assessed on imported merchandise and is collectible before that merchandise may pass through customs and enter the commerce of this country is an internal revenue tax. We might just as well state in the law that black is white.

There has been a disposition on the part of Congress in recent years to levy duties on imported merchandise in revenue acts. Our association has theretofore suggested that duties should be confined to tariff acts or amendments to tariff acts as such rather than to be incorporated in acts known as revenue acts which are supposedly devoted to the assessment of internal revenue taxes.

In the case of *Shaw & Co.* v. *United States* (11 Ct. Cust. Appls. 226; T. D. 38990), affirming the decision of the United States Customs Court (39 Treas. Dec. 318), it was held that taxes collected on imported distilled spirits under section 600 of the Revenue Act of 1918 (40 Stat. L. 1057) were customs duties in addition to the duties imposed thereon by paragraph 237 of the Tariff Act of 1913.

In that case Judge Smith stated:

"Taxes levied on domestic spirits, whether in bond or not, are beyond question excise or internal revenue taxes, and taxes levied on distilled spirits imported into the country and still in customs custody are just as certainly imposts on imports and therefore customs duties. The designation of a tax on domestic products or industries as a customs duty would be an inexcusable misnomer; and it is no less a misnomer to call a levy on imports in customs custody an internal revenue tax. True enough, excises and duties are both in a sense indirect taxes; nevertheless, they are so essentially different that neither can be converted into the other or into anything else by simply giving it another name. If it were otherwise the constitutional provisions which reserve to Congress the right to regulate commerce among the several States and which inhibit the States from laying imposts or duties on imports or exports without the consent of Congress might be avoided and defeated by the simple process of dubbing such taxes, license fees or stamp taxes,

as was attempted by the State of Maryland in 1821, by California in the 'fifties' and by the State of Tennessee in 1881. (*Brown* v. *Maryland*, 12 Wheat. 4190; *Almy* v. *California*, 24 How. 169–173; *Robbins* v. *Shelby County*, 120 U. S. 489.)

"Moreover, the limitation on the power of Congress to lay a tax or duty on articles exported from any State might be readily evaded by the droit expedient of imposting a stamp tax on bills of lading or by levying on such articles a so-called internal revenue tax. The National Government can not impose any tax burden on exports of the States, and the States on the other hand cannot subject either imports or exports to any impost, whatever may be the name or guise it takes. In other words, the name of a tax does not determine its nature. (*May* v. *New Orleans*, 178 U. S. 496–507; *Fairbank* v. *United States*, 181 U. S. 283–290–291.)

"Whatever, therefore, may have been the 'excise' or 'internal revenue' taxes levied by the act approved February 24, 1919, the taxes laid by it on imports in customs custody were essentially 'customs duties' determinable and collectible as prescribed by law. (*United States* v. *Shallus*, 9 Ct. Cust. Appls. 168, T. D. 37999; *Porges & Levy* v. *United States*, 1 Ct. Cust. Appls. 244, T. D. 38575; *Baljer & Co. et al.*, v. *United States*, 11 Ct. Cust. Appls. 60, T. D. 38726)."

We suggest that the assessment of duties under the guise of internal revenue taxes and the provision that such taxes shall not be considered as duties may interfere somewhat with the Department of State in its negotiations of trade pacts.

There is another objection to this provision, and that is the effect that it would have upon what is known as United States value. Where there is no foreign value or export value, the duties are assessed on the United States value. This value is defined to be the selling price of the article in the United States with deductions for profit and overhead, limited to 8 percent for each, ocean freight and insurance, and duty. This procedures a theoretical foreign value. If a part of the duty is assessed in a revenue statute and under the proposed provision could not be regarded as duties, it could not be deducted, and the importer would pay a duty on a duty.

Section 24 (amending sec. 603 of the Tariff Act of 1930): Under this proposed amendment, reports to the United States district attorneys are provided only in cases which require legal proceedings. We believe this amendment to be desirable. However, the section as rewritten provides as follows:

"It shall be the duty of the collector or the principal local officer of the customs agency service to report such seizure or violation to the United States attorney * * *."

Section 602 of the tariff act (which is not proposed to amend) requires "any officer, agent, or other person authorized by law to make seizures of merchandise * * * to report every such seizure immediately to the collector for the district in which such violation occurred * * *."

Thus we would have a provision requiring officers making seizures to report to the collector, followed by a provision authorizing either the collector or the principal local officer of the customs agency service to make reports where necessary to the United States attorney. It is contemplated under the proposed amendment to section 603 that reports to the United States attorneys are not mandatory in every case but only in such cases which require legal proceedings. We would, therefore, have two officers vested with the authority to make a decision as to whether a report in a given case should or should not be sent to the United States attorney.

An investigating officer who believes that he has discovered a violation of the customs law and has made a seizure, is usually impressed with the importance of the case and the correctness of his position. Therefore, if such agent made a report to the collector, as required by section 602, and the collector—exercising his authority under section 603—should decide that the case did not involve legal proceedings and consequently should not be reported to the United States attorney, the principal officer of the investigating force could himself send it forward to the United States attorney. There would undoubtedly be considerable conflict and confusion.

The collector of customs is the chief officer of the port and section 602 rightly provides that reports of all seizures should be made to him. It follows that as chief officer he should have the right, subject to review by the Secretary of the Treasury, to decide whether or not the case should be sent to the United States Attorney. We, therefore, believe that in the proposed amendment the following words should be omitted: "or the principal local officer of the customs agency service."

Section 27 (amending sec. 623 of the Tariff Act of 1930): This section is designed to give the Secretary of the Treasury broad power to require bonds and to provide the conditions in such bonds. Paragraph (*a*) provides that the Secretary

may "by regulation or specific instruction require * * *." The word "instruction" has never been used, so far as we know, in any tariff provision. If it is meant by this that the Secretary may issue some instruction—which is not published—to a collector at a particular port to require certain conditions in a bond, we think that is undesirable.

An importer should know before he places his order for merchandise abroad whether a bond is required and just what the conditions of that bond are to be. Under this term "specific instruction" the importer may not be confronted with a condition that he must subscribe to when he gives a bond until his merchandise arrives and he is called upon to furnish a bond.

Subdivision (d) provides that no condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond.

If an importer is required to give a bond containing a condition which is not specified in the law, or under any regulation or specific instruction required by the Secretary of the Treasury, who would be responsible for such condition. Obviously it is not in the law or any regulation or specific instruction of the Secretary of the Treasury, it must be some condition thought of by a subordinate official at the port where the bond is taken.

We believe that this provision is entirely too broad and that it should be modified to follow such language in the existing statute, which provides that "no condition in any such bond shall be held invalid on the ground that such condition is not specified in the law authorizing or requiring the taking of such bond," with the possible addition after the word "law" of the words "or regulation."

Section 30 (amending sec. 314 and par. 1615 of the Tariff Act of 1930): The council also endorses the proposed amendment to paragraph 1615 and the repeal of section 314 of the Tariff Act of 1930. This amendment broadens the existing law and removes an unnecessary limitation; that is, that American goods which have been exported must, in order to be entitled to free entry upon return to the United States, be imported into this country by or for the account of the exporter.

We will refer briefly to certain amendments which we believe should be made, and which were suggested by us to the Treasury Department on March 16, 1937, a copy of which is attached herewith.

Section 500. Duties of appraising officers: We believe that the following amendment should be made:

Amend paragraph (5) of division (a) to read as follows:

"(5) To report his decisions to the collector within 120 days after the date of entry."

Delays in returning invoices by the appraiser to the collector in the past few years have been so frequent and have caused such disturbance to the business of the importer as to require that there be some time limit specified in the law within which such returns must be made. Returns of invoices have been withheld for as long a period as 3 years, and it is not uncommon for such returns to be delayed for 6 or 8 months or a year.

If the examiner has no information that would lead him to believe that the value in the invoice is incorrect, he should return the invoice promptly. If he believes that he should have information as to values from the Treasury agent located in the foreign country from which the merchandise came, he can ask for a report. If this report is received within a reasonable time and shows a value higher than that shown in the invoice and approved, the collector can be informed, and in most cases there would be ample time for the collector to call for reappraisement under section 501.

If, as proposed in this amendment, the appraiser has 4 months to make a return on the invoice, and the collector has 60 days thereafter to call for reappraisement, the Government has full protection for a period of 6 months and certainly that should be ample time to obtain a report from a Treasury agent abroad.

While the Government is entitled to proper protection, it must also be borne in mind that the importer is likewise entitled to some consideration. It is obvious that an importer, entering his merchandise at what he believes to be market value, and guilty of no fraudulent act, should not be put in the position of having to pay duty on a value far in excess of that on which he entered his goods for a period of 2 or 3 years. It makes importing too precarious. It cannot be urged that it is a reasonable procedure to withhold the appriasement of merchandise for periods of 1 to 3 years.

Section 501. Notice of appraisement—Reappraisement: If the appraiser is required to make returns within 120 days, and in the absence of such return the

entered value is to become the final appraised value, the collector should be given an opportunity to file an appeal for reappraisement and, therefore, section 501 should be amended by inserting the following:

"If the appraiser fails to report the value to the collector within the period prescribed by Section 500, and the entered value shall become the appraised value, the period within which the collector may file a written appeal for reappraisement shall be extended to 180 days from the date of entry."

NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, INC.

Dated, New York, N. Y., January 26, 1938.

STATEMENT OF THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, INC., NEW YORK, N. Y., ON SUGGESTED CHANGES, SPECIAL AND ADMINISTRATIVE PROVISIONS, TARIFF ACT OF 1930

The board of directors of the National Council of American Importers and Traders, Inc., some weeks ago, instructed the customs committee of this organization to study carefully the special and administrative provisions of the Tariff Act of 1930 and to prepare, on behalf of our membership, a statement of suggested changes in the said provisions.

The board of directors has received, during the past few years, a number o complaints from members of the national council concerning the operation o certain sections of these provisions, which clearly indicates that some changes should be made to relieve American importers from unnecessary hardships that have resulted from the application of certain special and administrative provisions The Reciprocal Trade Agreement Act (Sec. 350, of the Tariff Act of 1930), has now been extended for a further period of 3 years from June 12, 1937, for the purpose of expanding foreign markets for the products of the United States by affording corresponding market opportunities for foreign products in the United States. The spirit of the reciprocal trade agreements program is to modify any existing duties or other import restrictions deemed to be unduly burdening and restricting the foreign trade of this country.

It is, therefore, believed that customs procedure should be reasonably modified to simplify the administration of the tariff, wherever such simplifications can be accomplished without endangering, in any wise, the proper protection of the revenue.

Mr. James W. Bevans, our customs counsel and adviser, has prepared in detail certain suggested changes, in collaboration with our customs committee, which committee, under the authority given to it by the board of directors, has unanimously approved each of the following suggestions:

Section 304. Marking of imported articles: Amend subdivision (a) by changing the period to a comma after the word "article" in the last line, and adding: "And may likewise exempt any article, its immediate container, and package from the requirement of marking, stamping, branding, or labeling where such article is to be used by the importer in his own establishment or is used in the production or manufacture of another article in his establishment and loses its identity."

Subdivision (b) should be amended to read:

"(b) *Penalty for failure to mark.*—If at the time of importation any article or its container is not marked, stamped, branded, or labeled in accordance with the requirements of this section, there shall be levied, collected, and paid on such article, unless exported under customs supervision, a penalty equal in amount to 10 percent of the value of such article, with a maximum on any importation of $100, which penalty shall be in addition to any duty imposed by law on such article."

NOTE.—The purpose of this requirement that imported articles be marked to indicate the country of origin is to disclose to the purchasing public the fact that the article was produced in a foreign country and not in the United States, so that if it has any preference for, or prejudice against, foreign-made goods, it may be in a position to distinguish between such goods and American products. It, therefore, is logical and reasonable that, where a man imports an article solely for use in his own establishment, or for manufacture in his own establishment into some article, wherein the imported material loses its identity, the Secretary of the Treasury should be given the authority to exempt such article, its immediate container, and the outside package from the marking requirement.

A case arose recently where a manufacturer of chocolate almond bars imported shelled almonds in bags. The bags were marked "Portucues." The Treasury Department held this not to be a proper marking and thereby subjected the importer

to a marking duty of about $2,000. These almonds were to be used in the manufacture of a confection and it was ridiculous to require the importer (who knew where the almonds came from and was not going to market them in the condition in which imported) to re-mark the bags and to pay this penalty.

The so-called marking duty is a penalty. It cannot be disguised by calling it an additional duty. It, therefore, should be called a penalty in the statute, and by this change in nomenclature the Secretary of the Treasury would have the power to mitigate. As the statute is now worded, the amount of the penalty is measured by the value of the goods imported, although the oversight for which such penalty is imposed is the same regardless of the value of the merchandise.

At present, one importer may bring in 100 cases of a cheap commodity, the total value of which may be $1,000, and his penalty (if they were not properly marked) would be 10 percent of $1,000 or $100. Another importer might import one package of merchandise, valued at $3,000, and the penalty assessed against him would be $300.

Section 336. Equalization of costs of production: Subdivision (a) should be amended to read as follows:

"(a) The Commission shall report to the President the result of the investigation and its findings with respect to such differences in costs of production and whether the domestic industry is efficiently and economically operated."

Subdivision (c) should be amended to read as follows:

"(c) *Proclamation by the President.*—The President shall by proclamation approve the rates of duty and changes in classification and in basis of value specified in any report of the Commission under this section, if it shall appear from such report that the domestic industry engaged in the manufacture and production of like or similar articles is efficiently and economically operated in the United States, and if in his judgment such rates of duty and changes are shown by such investigation of the Commission to be necessary to equalize differences in costs of production."

NOTE.—These changes in section 336 should be made as it would seem obvious that rates of duty should not be increased in order to equalize the costs of production of an article where the industry producing it is not efficiently and economically operated in the United States.

The language sought to be included by the above-proposed amendment is exactly that used in section 337, under which the President may take action, with respect to imported merchandise, where there are any unfair practices. However, in order to act under section 337, it is necessary that the industry to be protected must be efficiently and economically operated in the United States.

Section 337. Unfair practices in import trade: Subdivision (a) should be amended by adding, after the word "provided," in the last line, the following:

"That the terms 'unfair methods of competition' and 'unfair acts' shall not include the infringement of patents or trade-marks."

NOTE.—The infringement of a patent has never been considered by the courts as constituting unfair competition. It has always been held that, to constitute unfair competition, acts must have been committed which would have fallen within that designation had there been no patent. A patent is a monopoly and Congress has provided the tribunal in which suits may be filed to prevent violations of the monopoly or to obtain damage for such violations.

The Tariff Commission is not equipped to properly determine a patent case and, as a result, a most unusual practice has developed, which has been sustained by the United States Court of Customs and Patent Appeals, namely, that a patent is considered prima facie evidence of its validity and, therefore, in considering a complaint based on an alleged infringement of a patent, the Tariff Commission will not hear any of the defenses in an action for a patent infringement. The present procedure is equivalent to an action to evict a man from the premises he is occupying and barring him from contesting the right of the party seeking to evict him.

Section 340. Domestic value—Conversion of rates: This section should be repealed in its entirety as it was a direction to the Tariff Commission to investigate various forms of value and to make a report. This was done several years ago.

Section 402. Value: Subdivision (a) should be amended to eliminate the provision that either foreign value or export value should be adopted as the first basis of appraisement, depending upon the higher of the two values. This causes considerable delay and confusion because the appraising officer must ascertain whether there is both a foreign value and an export value and the

amount of each in order to determine which is the higher. It is suggested that subdivision (a) should be amended to read as follows:

"(a) *Basis.*—For the purpose of this act the value of imported merchandise shall be—

"(1) The foreign value;

"(2) If the appraiser determines that foreign value cannot be satisfactorily ascertained, then the export value;

"(3) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

"(4) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

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

Subdivision (e) should be amended to read as follows:

"(e) *United States Value.*—The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for duty, cost of transportation and insurance, and other necessary expenses from place of shipment to place of delivery, a commission not exceeding 10 percent, if any has been paid or contracted to be paid, and an allowance for actual expenses on goods secured otherwise than by purchase, or profits which ordinarily are realized in the sale of merchandise of the same general character as the particular merchandise under appraisement, and an allowance for actual expenses on purchased goods."

NOTE.—No reason is perceived why (in finding a theoretical foreign value, by taking the selling price in the United States and working back) an importer should pay duty on a value that includes a part of his profits and general expenses. The present allowance of 8 percent–and 8 percent is an arbitrary one and it is common knowledge that in practically all lines of business the overhead or general expenses exceed 8 percent. Likewise the profits exceed 8 percent, except possibly where merchandise is handled in bulk, that is commodities such as wheat, sugar, and the like.

There should be no difficulty in proceeding under this definition of United States value for the reason that the fourth value provided—that is, cost of production—considers the actual profit. In finding cost of production, a value is built up, then the general expenses in the case of such or similar merchandise, and an addition for profit "equal to the profit which ordinarily is added in the case of merchandise of the same general character as the particular merchandise under consideration." United States value is formed by deducting the same factors that are added in the case of the cost-of-production value. Therefore, no reason is perceived for a different rule with respect to general expenses and profit.

Section 482. Certified invoice: Subdivision (a) should be amended to read in part as follows:

"(a) *Certification in general.*—Every invoice covering merchandise in which the purchase price exceeds $100 shall, or at before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officers of the United States."

NOTE.—The effect of this change is to substitute "purchase price" for "value." The law at present requires an invoice where merchandise exceeds $100 in value. At the same time, it is required that an invoice covering merchandise purchased or agreed to be purchased shall state the actual purchase price. The foreign shipper knows the price paid or agreed to be paid, but he does not know what the dutiable value may be as subsequently determined by appraising officers after entry has been made. The result is that merchandise may be purchased for $90 and, consequently, no certified invoice obtained, but when the appraiser makes his return of value, he may advance the $90 to $110, thus necessitating the production of a consular invoice. It seems obvious, therefore, that the purchase price rather than the value should be the determining factor as to whether or not a consular invoice should be produced.

Subdivision (e) Disposition.—Add, at the end of the paragraph, after the word "destruction," the following:

"Either the original, triplicate, or quadruplicate shall be accepted for the purposes of entry or cancelation of bonds given for the production of consular invoices."

NOTE.—Inasmuch as the consular invoice is executed before the consul in quadruplicate, the original, triplicate, or quadruplicate should be sufficient for the purpose of making entry or to cancel a bond given for the production of a consular invoice.

Section 484. Entry of merchandise: Subdivision (a) should be amended to substitute "72 hours" for "48 hours."

NOTE.—The effect of this amendment would be to extend the general order period from 48 to 72 hours. Forty-eight hours are frequently found to be too short a period of time within which an entry may be made and while the collector has the right to extend the general order period, this unnecessarily requires action on the part of the importer and the customs officials without any special advantage to the Government. The revenue would not be endangered in any way nor would business be interfered with but rather facilitated by extending the limitation of 48 hours to 72 hours.

Subdivision (b), paragraph (3) should be amended to read as follows:

"(3) Such person gives a bond for the production of such certified invoice within 6 months, which period may be extended at the discretion of the Secretary of the Treasury for a further period of 6 months."

NOTE.—The Secretary of the Treasury should have the discretion to extend the period covered by bond for the production of such certified invoice for a further period of 6 months. This would not in any way endanger the revenue and would relieve the importer of being penalized, under the bond, where he has been unable to obtain the certified invoice within the 6-month period.

Section 487. Value in entry—Amendment: This section should be amended by adding the following:

"The appraiser may, upon application of the importer, furnish information as to value, either before or after entry of the merchandise but before the invoice or the merchandise has come under his observation for the purpose of appraisement, under regulations prescribed by the Secretary of the Treasury."

NOTE.—Much confusion and additional work for both importers and customs officials have been occasioned as to dutiable value given importers by the appraiser. The former system worked most efficiently and recognized the principle that additional duties were provided to punish dishonest importers and not to be a source of revenue. In reply to criticism, the Treasury Department has stated that there was no warrant in the law for the dissemination of information as to value. This amendment would give such authority to appraising officers.

Section 489. Additional duties: This section should be amended by eliminating the following:

"If the appraised value of any merchandise exceeds the value declared in the entry by more than 100 percent, such entry shall be presumptively fraudulent, and the collector shall seize the whole case or package containing such merchandise and proceed as in case of forfeiture for violation of the customs law; and in any legal proceeding other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he rebuts such presumption of fraud by sufficient evidence."

NOTE.—Section 591 and 592 are ample to protect the Government in case of a fraudulent entry or any fraudulent practice in connection with the passing of any merchandise through customs. The matter eliminated by this proposed amendment causes a great deal of unnecessary effort on the part of importers and the Treasury Department.

For example, if an importer enters his merchandise at the price actually paid, which is admitted to be foreign market value, and the appraiser decides that such merchandise is within a proclamation of the President under section 336, changing the basis of appraisement to American selling price, almost invariably it results in an advance of more than 100 percent. In such a case, where there is not the slightest suggestion of fraud, it becomes mandatory upon the collector to seize the merchandise and to proceed as in the case of forfeiture for violation of the customs laws, unless the Secretary of the Treasury mitigates such forfeiture. This necessitates an application on the part of the importer, the consideration of the application by the Treasury Department, and action thereon.

An advance of more than 100 percent may occur in many cases where such advance is due solely to a change in the basis of appraisement. It is believed to be an unnecessary provision of law which does not protect the revenue but only increases the work.

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Section 500. Duties of appraising officers: Amend paragraph (5) of subdivision (a) to read as follows:

"(5) To report his decisions to the collector within 120 days after the date of entry."

NOTE.—Delays in returning invoices by the appraiser to the collector, in the past few years, have been so frequent and have caused such disturbance to the business of the importer as to require that there be some time limit specified in the law within which such returns must be made. Returns of invoices have been withheld for as long a period as 3 years, and it is not uncommon for such returns to be delayed for 6 or 8 months or a year.

If the examiner has no information that would lead him to believe that the value in the invoice is incorrect, he should return the invoice promptly. If he believes that he should have information as to values from the Treasury agent located in a foreign country from which the merchandise came, he can ask for a report. If this report is received within a reasonable time and shows a value higher than that shown in the invoice and approved, the collector can be informed and in most cases there would be ample time for the collector to call for reappraisement under section 501.

If, as proposed in this amendment, the appraiser has 4 months to make a return on the invoice, and the collector has 60 days thereafter to call for reappraisement, the Government has full protection for a period of 6 months and certainly that should be ample time to obtain a report from a Treasury agent abroad.

While the Government is entitled to proper protection, it must also be borne in mind that the importer is likewise entitled to some consideration. It is obvious that an importer, entering his merchandise at what he believes to be market value, and guilty of no fraudulent act, should not be put in the position of having to pay duty on a value far in excess of that on which he entered his goods for a period of 2 or 3 years. It makes importing too precarious. It cannot be urged that it is a reasonable procedure to withhold the appriasement of merchandise for periods of 1 to 3 years.

Section 501. Notice of appraisement—Reappraisement: If the appraiser is required to make returns within 120 days, and in the absence of such return the entered value is to become the final appraised value, the collector should be given an opportunity to file an appeal for reappraisement and, therefore, section 501 should be amended by inserting the following:

"If the appraiser fails to report the value to the collector within the period prescribed by section 500, and the entered value shall become the appraised value, and the period within which the collector may file a written appeal for reappraisement shall be extended to 180 days from the date of entry."

Section 503. Dutiable value: Subdivision (b) should be amended by eliminating the following language: "and if it shall appear that such action of the importer on entry was taken in good faith."

NOTE.—Where an importer has made a duress entry and has litigated the test case and received a decision in his favor, it seems frivolous to require him to write a letter to the collector, stating that when he made the duress entry and contested the advance made by the appraiser, he was acting in good faith. The question of whether he did or did not act in good faith would seem to be immaterial where his contention has been sustained by the court.

Subdivision (b) should be further amended by substituting the word "review" for "reappraisement." There is now no provision in the statute for proceedings formerly termed "reappraisements." It is now a "review."

Section 516. Appeal or protest by American producers: Subdivision (b) should be amended to read as originally recommended by the Treasury Department in a bill submitted to the 74th Congress in the year 1936, to wit:

"(b) *Classification.*—The Secretary of the Treasury shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification of, and the rate of duty, if any imposed upon, designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the proper rate of duty is not being assessed, he may file a complaint with the Secretary, setting forth a description of the merchandise, the classification, and the rate or rates of duty he believes proper, and the reasons for his belief. If the Secretary decides that the classification of, or rate of duty assessed upon, the merchandise is not correct, he shall notify the collectors as to the proper classification and rate of duty and shall so inform the complainant, and such rate of duty shall be assessed upon all such merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of such notice to the collectors. If the Secretary decides that the classification and rate of duty are correct, he shall so

inform the complainant. If dissatisfied with the decision of the Secretary, the complainant may file with the Secretary, not later than 30 days after the date of such decision, notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise. Upon receipt of such notice from the complainant, the Secretary shall cause publication to be made of his decision as to the proper classification or rate of duty and of the complainant's desire to protest, and shall thereafter furnish the complainant with such information as to the entries and consignees of such merchandise, entered after the publication of the decision of the Secretary at the port of entry designated by the complainant in his notice of desire to protest, as will enable the complainant to protest the classification of, or rate of duty imposed upon, such merchandise in the liquidation of such an entry at such port. The Secretary shall direct the collector at such port to notify such complainant immediately when the first of such entries is liquidated. Within 30 days after the date of such liquidation, the complainant may file with the collector at such port a protest in writing setting forth a description of the merchandise and the classification and rate of duty he believes proper. Notwithstanding such protest is filed, the merchandise of the character covered by the published decision of the Secretary, when entered for consumption or withdrawn from warehouse for consumption on or before the day of publication of a decision of the United States Customs Court or of the Court of Customs and Patent Appeals, rendered under the provisions of subdivision (c) of this section, not in harmony with the published decision of the Secretary, shall be classified and the entries liquidated in accordance with such decision of the Secretary, and, except as provided in sections 514, 515, 520 of this act, the liquidations of such entries shall be final and conclusive upon all parties. If the protest of the complainant is sustained in whole or in part by a decision of the United States Customs Court or of the Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication of such court decision, shall be subject to classification and assessment of duty in accordance with the final judicial decision, not subject to further judicial review, whether by rehearing, appeal, or otherwise, on the complainant's protest, and the liquidation of entries covering such merchandise so entered or withdrawn shall be suspended until such time, whereupon such entries shall be liquidated, or, if necessary, reliquidated in accordance with such final decision."

Note.—This amendment was submitted to the last Congress by the Treasury Department, but was not enacted into law. It was included as a part of the bill relating to customhouse brokers, and it is understood that the matter came up toward the end of the session of Congress, but in order to obtain the passage of that portion of the bill relating to customhouse brokers, the proposed amendment to section 516 was eliminated.

This amendment would apply to any decision imposing a higher rate of duty, as a result of a domestic manufacturer's protest, to merchandise entered for consumption or withdrawn from warehouse for consumption, after the date of publication of the court's decision. That is to say, entries would be no longer suspended from the date of the publication of the Treasury's decision on a domestic manufacturer's complaint and liquidated in accordance with the final decision of the——

Where an importer is paying a rate of duty that the Secretary of the Treasury, after full consideration, has decided to be the correct rate of duty, he certainly should not be put in the position of having the liquidation of his entries suspended whi.e a domestic manufacturer contests the Department's decision.

The present law provides that if the Secretary of the Treasury shall, in considering a domestic manufacturer's complaint, decide that such complaint is well founded and that the duty should be at a higher rate, such rate shall not be applied for a period of 30 days. If it is proper not to apply a decision of the Treasury Department, increasing the rate, for a period of 30 days, it certainly is fair and equitable not to apply a decision of the court, increasing the rate on a domestic manufacturer's protest, at least until the decision is rendered. It, obviously, is unfair and inequitable to make it retroactive and apply it by suspending the liquidation of entries made after the matter has been decided in the importer's favor by the Treasury Department and the domestic manufacturer has lodged a protest.

There are, as a matter of fact, many sound reasons why section 516 should be entirely eliminated.

Domestic manufacturers certainly have no more interest in the amount of tax paid in the form of duty by an importer, than any citizen in the United States has in being assured that his neighbor pays the proper amount of income tax. No citizen should be permitted to institute a proceeding involving a matter between the Government and an individual taxpayer as to the proper amount of tax to be collected.

Domestic manufacturers urge that duties are levied for their protection, and, therefore, they are injured if the full amount is not assessed and collected. Any citizen of the United States who is called upon to pay a portion of the expenses of the Government, in the form of income tax, is just as much concerned in seeing that the other fellow pays his full share—otherwise the rate of tax must be increased.

It is an unusual provision of law and first appeared in the Tariff Act of 1922. It can readily be taken advantage of, and is frequently, to harass an importer, and in some instances to prevent him from importing because of the uncertainty that is created during the time the litigation is pending, which may be for 2 years.

Where a domestic manufacturer files a protest under section 515, the Government takes very little interest, leaving the matter almost entirely to the importer to defend the rate of duty assessed. It is to the interest of the domestic manufacturer that the proceeding be retarded as long as possible and every effort of delay is generally resorted to.

Respectfully submitted,

NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, INC.,
C. G. PFEIFFER, *President.*

NEW YORK, N. Y., *March 16, 1937.*

RE PROPOSED AMENDMENT TO PARAGRAPH 1111 OF THE TARIFF ACT OF 1930 AS EMBODIED IN H. R. 8099

By this amendment, the words "of blanketing" would be deleted from paragraph 1111. This would have the effect of classifying for duty purposes, under the rates specified in that paragraph, articles which are now being assessed with duty at 50 percent ad valorem under paragraph 1120.

Paragraph 1111 provides for blankets and similar articles, including carriage and automobile robes and steamer rugs made of blanketing, as units or in the piece, finished or unfinished, wholly or in chief value of wool. Varying rates are provided, depending upon value.

The United States Court of Customs and Patent Appeals held that this paragraph covered articles which were made from blanketing and that where the material from which the articles were made did not exist prior to the manufacture of such articles as blanketing, such articles were not dutiable under that paragraph but as manufactures in chief value of wool under paragraph 1120.

The effect of the proposed amendment would be to make paragraph 1111 a broad paragraph covering all carriage and automobile robes and steamer rugs wholly or in chief value of wool. While it would thus raise the rate of duty to 50 percent to, in some instances, 90 percent of foreign value, it would have the effect of lowering the duty in other instances.

For example, paragraph 1110 provides for articles, finished or unfinished, made or cut from pile fabrics, at rates of duty higher than those in paragraph 1111. If paragraph 1111 is amended to cover all automobile robes and steamer rugs in chief value of wool, then such an article made of a pile fabric could be imported at a lower rate of duty than is now assessed under paragraph 1111.

Further, paragraph 1114 (d) provides for articles knit or crocheted, wholly or in chief value of wool, at higher rates than the duties assessed under paragraph 1111. Consequently, if the amendment were adopted, an automobile robe, steamer rug, or other article eo nomine provided for in paragraph 1111, would be dutiable at the lower rates of duty even if knit or crocheted.

It may be pointed out that this is true by reason of the fact that an eo nomine provision for an article is more specific than a provision generally for articles made in a certain manner or of a certain material, that is, articles knit or crocheted, or articles made from pile fabrics.

As stated, these steamer rugs are now assessed with duty at 50 percent under paragraph 1120. The result of the proposed amendment would be to increase the duty on a more expensive rug, having a foreign value of $2, to an equivalent

ad valorem duty of 81 percent; while a rug having a lower foreign value would pay a duty of 92 percent. A steamer rug having a foreign value of $1.50 would be assessed with duty at 30 cents per pound, plus 30 percent ad valorem. This rug weighing 3 pounds, the total duty would be $1.44, which is equivalent to 94 percent on foreign value. A 3-pound rug of fine quality, having a foreign value of $5, would be subject to a duty of $3.50, which is an equivalent ad valorem duty of only 64 percent.

Thus, the cheaper the rug the higher the equivalent ad valorem rate. The cheaper qualities, which are naturally used more extensively by the masses, would therefore be subjected to very much higher equivalent ad valorem rates of duty than the finer qualities which would be used by a limited number of people. It does not seem consistent to heavily tax the article used by the poor man as against that used by the well-to-do class.

It is stated that this proposed amendment is to correct the decision of the appellate court which did not carry out the intent of Congress. The fact must not be lost sight of that the Congress referred to as a high protection Congress that provided rates in the Tariff Act of 1930 higher than ever contained theretofore in any tariff act. It does not seem consistent that a Democratic Congress should concern itself in adjusting rates to meet the intent of a high protection Republican Congress.

Further, such a policy would not appear to be consistent with the activities of our Government in its attempt to lower duties in order to free foreign trade from tariff barriers, and thus to increase the export of agricultural products, which is so necessary to the prosperity of the farmer.

James W. Bevans,

Attorney for The Curvon Corporation, 419 Fourth Avenue, New York, N. Y.; Philadelphia Blanket Co., Second and Allegheny Avenue, Philadelphia, Pa.; Wm. Ayres & Sons, Inc., Philadelphia, Pa.

New York, N. Y., *January 20, 1937.*

Senator Walsh. The next witness will be Mr. Tompkins.

STATEMENT OF ALLERTON DE CORMIS TOMPKINS, NEW YORK CITY, REPRESENTING NUMEROUS CUSTOMHOUSE BROKERS AND PORT FORWARDERS

Senator Walsh. Your full name?

Mr. Tompkins. Allerton de Cormis Tompkins.

Senator Walsh. Whom do you represent?

Mr. Tompkins. I am a member of the law firm of Tompkins & Timpkins, 17 State, New York City, specializing in customs law. My firm represents many customhouse brokers and port forwarders throughout the eastern section of the United States, and we have been retained by a number of individuals and partnership customhouse brokers, houses located in Detroit, Mich.; Buffalo, N. Y.; Philadelphia, Pa., and Baltimore, Md., to appear before you in an attempt to amend section 485 (f) of the Tariff Act of 1930. That section is not contained in the present H. R. 8099.

This section 485 (f) pertains to the consignees of imported merchandise who are authorized to make the formal import declaration. Under the present practice an import declaration must be executed by a consignee. That is in accordance with section 484 (a) of the Tariff Act of 1930.

Section 485 (f) has been interpreted by the Treasury Department as follows: (1) If the consignee is an individual no one but that individual can sign a declaration; (2) if the consignee is a partnership no one but one of the partners can sign the declaration; (3) if the consignee is a corporation much greater latitude is granted to the consignee, because the declaration can be signed by anyone who has been specifically empowered so to do by any officer of the corporation.

I am appearing before you in an attempt to have you give the same privilege to the individual or partnership consignees as you have already given to the incorporated consignees. The amendment of section 485 (f) which I have proposed will greatly facilitate the clearance of merchandise imported by individuals or partnerships, without injuring or handicapping the Government or the customs officials in any way, and it will give the same rights and privileges to individuals or partnership consignees as under the law as now written is given exclusively to corporations.

For the convenience of your committee I am filing my proposed amendment; also a form of "consumption entry" on customs Form No. 7501, which, on the back thereof, shows the wording of a declaration; also a declaration of owner, customs Form No. 3347, showing the wording of an owner's declaration.

Senator WALSH. Has that been submitted to the representative of the Treasury?

Mr. TOMPKINS. It has been submitted to the Commissioner of Customs.

Senator WALSH. In Boston?

Mr. TOMPKINS. In Washington, here, Mr. Moyle, and he has suggested that we take it up before your committee in reference to this present bill.

Senator VANDENBERG. I have been told that the Commissioner has no particular objection to this. Have you anything to say on that subject, Mr. Johnson?

Mr. JOHNSON. I have not seen the proposed amendment. I am familiar with the general subject; I know how it affects certain partnership brokers at Detroit. It is purely a question of the terms of the statute at the present time, as far as I am familiar with the question.

Senator WALSH. You will later give us an opinion on it?

Mr. JOHNSON. No, sir.

Senator VANDENBERG. As far as the principle of the thing is concerned, you know of no particular objection?

Mr. JOHNSON. No, sir.

Senator WALSH. Thank you, sir.

(The statement filed by Mr. Tompkins is as follows:)

On behalf of numerous customhouse brokers throughout the eastern section of the United States, including John V. Carr & Son, V. G. Nahrgang, and F. S. Whelen, of Detroit; C. J. Tower & Son, of Buffalo; F. B. Vandergrift & Co., of Philadelphia; and John S. Connor, of Baltimore, we respectfully request that you carefully consider in connection with the now pending customs administrative bill known as H. R. 8099, the advisability of amending section 485 (f) of the Tariff Act of 1930. Said section 485 (f) reads as follows:

"(f) Deceased or Insolvent Persons—Partnerships and Corporations: Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or receiver or trustee in bankruptcy, shall be considered as the consignee; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation, or by any other person specifically authorized by any officer of such corporation to make the same."

Under the practice now prevailing with the customs officials, the declaration of a customhouse broker consignee (sec. 485, Tariff Act of 1930; art. 295, Customs Regulations of 1931) must be signed by (1) the broker himself, if such broker is acting as an individual, and the broker cannot authorize an agent or employee to sign for him, and (2) one of the partners in a partnership, and such partner cannot authorize an agent or employee to sign for him; whereas if such a customhouse

broker is a corporation, an officer of such a corporation can authorize anyone to sign such a declaration.

It is a well known fact that in many instances an employee or duly authorized agent of an individual or partnership customhouse broker, has better knowledge and more complete information about the data required in a declaration than the individual or the partner; especially so, where the brokerage house is large and retains employees or agents to investigate and act on some particular phase of an importation. Certainly it cannot be said that an agent of a corporation has more knowledge to complete and execute the data required in a declaration than an agent acting in the same capacity for an individual or a partnership.

On its face, therefore, the practice which has prevailed under the present law of recognizing agents of corporations, and of not recognizing agents of individuals and partnerships as being empowered to execute declarations for consignee customshouse brokers, is unfair and discriminatory.

We therefore suggest the following amendment to said section 485 (f):

"Section 485 (f) of the Tariff Act of 1930 is hereby amended by changing the period at the end of section 485 (f) to a semicolon, and by adding after the semicolon: 'when consigned to an individual or to a partnership such declaration may be made by any person specifically authorized by such an individual, or by one of the partners of such a partnership, to make the same.' "

Attention is called to the fact that the interests of the Government will be fully protected if the above amendment be adopted, as the law is well settled that the principal is liable for the acts af a duly authorized agent.

This matter is one of deep interest and concern to all customhouse brokers throughout the country who are doing business either as individuals or as partnerships.

By reason of interviews heretofore had with Mr. Johnson and Mr. Flinn of the Customs Bureau, and also a letter which we received from Mr. Moyle, Commissioner of Customs, under date of November 24, 1937, we trust and believe that the proposed amendment will meet with the approval of, or at least that it will not be opposed by, the Bureau of Customs, although of course, upon that point we cannot speak definitely.

TOMPKINS & TOMPKINS,
Attorneys at Law, New York City.

(The forms submitted by Mr. Tompkins are as follows:)

Customs Form 7501
TREASURY DEPARTMENT
Arts. 305, 339, 428, 492, C. R. 1931
July 1936

T. E. No..............................
Port from..............................
Via..............................
(Bonded carrier)

This space for number and date of entry.

Term Bond No........................

Copy for..............................
(Collector, comptroller, statistics, etc).

CONSUMPTION ENTRY

Permit Customs Form 7501A, and triplicate copy for statistical purposes, to be presented with entry

UNITED STATES CUSTOMS SERVICE

District No. ....

Port of .... Date filed ...., 193
Merchandise imported by ....
Arrived on the ....
(Name of importing vessel or carrier. If vessel, give flag and motive power)
on ...., 193 from ....
(Date of original importation)

Marks and numbers	Merchandise. Packages and description	Tariff paragraph	Value in foreign money	Entered value in U. S. money	Rate	Duty	
						Dollars	Cts.
	Quantity			Dollars only			
Invoice No.	........, Date ...., 19 , Place	......	......	......	......	......	......
......	......	......	......	......	......	......	......
......	......	......	......	......	......	......	......
Number of invoices........ W. H. Entry No........ G. O. No..........			......	......	......	......	......

Three copies are required for use at port of entry, in addition to permit Form 7501A. Entry and statistical statement may be prepared by carbon when classifications agree. If statistical statement is prepared separately, marks and numbers and foreign value may be omitted. The number, date, and place of invoice must be stated immediately above the goods described.

This form may be printed by private parties provided it conforms to official form in size, wording, color, and arrangement. For sale by collectors of customs at price of 25 cents for block of 100.

Signature..............................

Per..............................

Address..............................

Customs Form 7501

MISSING DOCUMENTS

NAME AND ADDRESS OF BROKER OR AGENT

(If this declaration is made by an agent, bond must be given to produce the declaration of the consignee in whose name the entry is made, in accordance with section 485 (c) of the Tariff Act of 1930.)

DECLARATION OF NOMINAL CONSIGNEE OR AGENT

I, the undersigned, herewith declare that the consignee in whose name this entry is made is not the actual owner of the merchandise covered thereby, but that this entry exhibits a full and complete account of all the merchandise imported in the vessel indicated therein by..
....of..
(Address)
who is the actual owner for Customs purposes of the said merchandise, except..
....

I also declare, to the best of my knowledge and belief, that all statements appearing in the entry and in the invoice or invoices and other documents presented herewith and in accordance with which the entry is made, are true and correct in every respect; that the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise, and that if at any time hereafter I discover any information showing a different state of facts I will immediately make the same known to the Collector of Customs at the port of entry.

I further declare, if the merchandise is entered by means of a seller's or shipper's invoice, that no certified invoice for any of the merchandise covered by the said seller's or shipper's invoice can be produced due to causes beyond my control: and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoice can be produced at this time.

.... (Signature)
.... (Address)

☐ *Principal.*
☐ *Member of the firm.*
☐ .... *of the corporation.*
(Title)
☐ *Authorized agent.*

Declared under oath before me this .... day of ...., 193 , at the port of ....
....
....
(Title or designation)

DECLARATION OF CONSIGNEE OR AGENT FOR MERCHANDISE OBTAINED IN PURSUANCE OF A PURCHASE OR AGREEMENT TO PURCHASE

I, the undersigned, herewith declare that this entry exhibits a full and complete account of all the merchandise imported by the consignee in whose name the entry is made in the vessel indicated therein, and that the merchandise was obtained by him in pursuance of a purchase, or an agreement to purchase, except..

I also declare, to the best of my knowledge and belief, that all statements appearing in the entry and in the invoice or invoices and other documents presented herewith and in accordance with which the entry is made, are true and correct in every respect; that the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof, that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise, and that if at any time hereafter I discover any information showing a different state of facts I will immediately make the same known to the Collector of Customs at the port of entry.

I further declare, if the merchandise is entered by means of a seller's or shipper's invoice, that no certified invoice for any of the merchandise covered by the said seller's or shipper's invoice can be produced due to causes beyond my control; and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoice can be produced at this time.

.... (Signature)
.... (Address)

☐ *Principal.*
☐ *Member of the firm.*
☐ .... *of the corporation.*
(Title)
☐ *Authorized agent.*

Declared to under oath before me this .... day of ...., 193.., at the port of ....
....
....
(Title or designation)

DECLARATION OF CONSIGNEE OR AGENT FOR MERCHANDISE OBTAINED OTHERWISE THAN IN PURSUANCE OF A PURCHASE OR AGREEMENT TO PURCHASE

I, the undersigned, herewith declare that this entry exhibits a full and complete account of all the merchandise imported by the consignee in whose name the entry is made in the vessel indicated therein, and that the merchandise was obtained by him otherwise than in pursuance of a purchase, or an agreement to purchase, except ....

I also declare, to the best of my knowledge and belief, that all statements appearing in the entry and in the invoice or invoices and other documents presented herewith and in accordance with which the entry is made, are true and correct in every respect; that the entry and invoices set forth the true foreign values, prices, quantities and all information as required by the laws and the regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise, and that if at any time hereafter I discover any information showing a different state of facts I will immediately make the same known to the Collector of Customs at the port of entry.

I further declare, if the merchandise is entered by means of a seller's or shipper's invoice, that no certified invoice for any of the merchandise covered by the said seller's or shipper's invoice can be produced due to causes beyond my control: and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoice can be produced at this time.

.... (Signature)
.... (Address)

☐ *Principal.*
☐ *Member of the firm.*
☐ .... *of the corporation* (Title)
☐ *Authorized agent.*

Declared to under oath before me this .... day of ...., 193 , at the port of ....

....
....
(Title or designation)

NOTATIONS

Customs Form 3347
TREASURY DEPARTMENT
Arts. 295, 1178, 1233, C. R. 1931; T. D. 47052
May 1934

DECLARATION OF OWNER

UNITED STATES CUSTOMS SERVICE

(This declaration must be presented to the collector of customs at the port of entry within 90 days after the date of entry in order to comply with sec. 485, par. (d), of the Tariff Act of 1930)

DECLARATION OF OWNER FOR MERCHANDISE OBTAINED IN PURSUANCE OF A PURCHASE OR AGREEMENT TO PURCHASE

I, the undersigned, representing.........., of.......... (Address) in the capacity indicated hereon, declare that they are the actual owners for customs purposes of the merchandise covered by the entry described below, and that they will pay all additional and increased duties thereon pursuant to section 485, paragraph (d), of the Tariff Act of 1930, and that such entry exhibits a full and complete account of all the merchandise imported by them in the vessel indicated therein and obtained by them in pursuance of a purchase, or an agreement to purchase, except..........
....

I also declare to the best of my knowledge and belief that all statements appearing in the entry and in the invoice or invoices and other documents presented therewith and in accordance with which the entry was made, are true and correct in every respect: that the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise; and that if at any time hereafter I discover any information showing a different state of facts, I will immediately make the same known to the collector of customs at the port of entry.

I further declare, if the merchandise was entered by means of a seller's or shipper's invoice, that no certified invoice for any of the merchandise covered by the said seller's or shipper's invoice could be produced due to causes beyond my control, and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoice could be produced at that time.

.... (Signature)
.... (Address)

☐ *Principal.*
☐ *Member of firm.*
☐ .... *of the corporation.* (Title)

Declared to under oath before me this .... day of ...., 193 , at the port of ....

....
(Title or designation)

DECLARATION OF OWNER FOR MERCHANDISE OBTAINED OTHERWISE THAN IN PURSUANCE OF A PURCHASE OR AGREEMENT TO PURCHASE

I, the undersigned, representing ...., of ....
(Address)

in the capacity indicated hereon, declare that they are the actual owners for customs purposes of the merchandise covered by the entry described below, and that they will pay all additional and increased duties thereon pursuant to section 485, paragraph (d) of the Tariff Act of 1930, and that such entry exhibits a full and complete account of all the merchandise imported by them in the vessel indicated therein and obtained by them otherwise than in pursuance of a purchase, or an agreement to purchase, except ....
....

I also declare to the best of my knowledge and belief that all statements appearing in the entry and in the invoice or invoices and other documents presented therewith and in accordance with which the entry was made, are true and correct in every respect that the entry and invoices set forth the true foreign prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof; that the invoices and other documents are in the same state as when received; that I have not received and do not know of any other invoice, paper, letter, document, or information showing a different currency, price, value, quantity, or description of the said merchandise; and that if at any time hereafter I discover any information showing a different state of facts, I will immediately make the same known to the collector of customs at the port of entry.

I further declare, if the merchandise was entered by means of a seller's or shipper's invoice, that no certified invoice for any of the merchandise covered by the said seller's or shipper's invoice could be produced due to causes beyond my control, and that if entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor certified invoice could be produced at that time.

.... (Signature) ☐ *Principal.*
☐ *Member of firm.*
.... (Address) ☐ .... *of the corporation.*
(Title)

Declared to under oath before me this .... day of ...., 193 , at the port of.............
....
(Title or designation)

Entry No. .... Consignee .... Vessel from .... Date ...., 19...

Number of packages	Seller or shipper	Place of consulation and number of invoice	Amount paid or to be paid in foreign currency	Rate of exchange	Entered value, foreign currency	Entered value U. S. dollars
....	....	....	....	....	....	....
....	....	....	....	....	....	....

Mailing address of owner ....

Senator WALSH. Mr. William J. Martin.

Mr. TOMPKINS. I represented Mr. Martin.

Senator WALSH. Mr. Reading.

STATEMENT OF E. J. READING, REPRESENTING THE CONSOLIDATED LITHOGRAPHING CORPORATION, BROOKLYN, N. Y., AND THE WOVEN LABEL MANUFACTURERS' ASSOCIATION, INC., OF THE NATIONAL FEDERATION OF TEXTILES, INC.

Senator WALSH. Your full name is E. J. Reading, and your residence is Paterson, N. J.?

Mr. READING. That is correct.

Senator WALSH. You are here representing the Consolidated Lithographing Corporation of Brooklyn, N. Y., and the Woven Label Manufacturers' Association, Inc., of the National Federation of Textiles, Inc.?

Mr. READING. That is right, Mr. Chairman.

Senator WALSH. You may proceed.

Mr. READING. I would like to talk about subsection (c) of section 15, at the top of page 21.

Now, I would like to go back to the beginning. Commencing with 1890, our various tariff acts have had a marking provision. From 1890

to 1922 they did not mean anything. We suspect that this subsection that I have just called attention to is going to put this proposed law back in that class.

Let us turn for a moment to page 2, section 304 (a) [reading]:

Marking of articles.—Except as hereinafter provided, every article of foreign origin (or its container as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.

Now, subsection (c) on page 21 says [reading]:

The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as amended by this act, shall not apply with respect to any article of a class or kind which is named or described in any obligation undertaken by the United States in a foreign trade agreement entered into under section 350 of the Traiff Act of 1930. (U. S. C., 1934 edition, title 19, sec. 1351.)

Should we exempt our friends, the foreign countries with whom we make a foreign-trade agreement, from our law? It seems to me section 304 (a), as I have read it to you, is ideal, and I think that expresses the intent of the Congress.

Senator VANDENBERG. Do you contend that this expands and extends the State Department's authority to make trade agreements?

Mr. READING. I am not questioning their authority to make them, but I say in making them those countries and those articles named in those trade agreements should not be exempt from our law. After all, I think we all hope that sooner or later all foreign countries will be on a friendly basis, and if this foreign trade agreement arrangement is carried far enough, everything will come under that. Why write this law? In my opinion section 304 (a) as here written is the most ideally worded marking law that has ever been written. Why write it off in subsection (c) of section 15 by saying it shall not apply where foreign-trade agreements are involved?

Senator VANDENBERG. Somebody else would have to answer you; I cannot.

Mr. READING. Well, I respectfully suggest that on page 21, section 15, subsection (c) the word "not" the last word at the end of the second line, be deleted, and that subsection (c) then read:

(c) The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as amended by this Act, shall apply with respect to any article of a class or kind which is named or described in any obligation undertaken by the United States in a foreign-trade agreement entered into under section 350 of the Tariff Act of 1930. (U. S. C., 1934 edition, title 19, sec. 1351.)

Senator WALSH. Would not that be the law even if this section was not written at all?

Mr. READING. I am afraid not.

Senator WALSH. You do not think so?

Mr. READING. No. Your amendment of 1934, section 2, this is the section 350 referred to there, says: "Section 2 (a). Subparagraph (d) of paragraph 369," and so forth, "the provisions of sections 336 and 516 (b) of the Tariff Act of 1930 shall not apply."

I am afraid if you delete this entire paragraph you will revert back to this thing which says the same thing.

Senator WALSH. Then this marking provision does not apply at the present time because of that law?

Mr. READING. That is so.

Senator WALSH. You want it to be made applicable?

Mr. READING. I think the ultimate purchaser in the United States should be entitled to know, if he or she is buying a foreign article, what country that article comes from. I think they are entitled to know the truth.

Senator WALSH. Do you know whether or not it has been the policy to exempt the marking of shipments from foreign countries with whom we have agreements?

Mr. READING. Here is how it works: They are marked in a worthless manner.

Senator WALSH. The same precision and accuracy is not required?

Mr. READING. Not at all. Any kind of marking goes.

Section 516 (b) is the section that permits a protest to be made over the head of the Secretary of the Treasury. It is not a case of it being peculiar to this administration. As I said, this marking law has been in every act since 1890, and from 1890 to 1922 it was not workable, it was not enforceable. The Secretaries of the Treasury did not enforce it. We know the Secretary of the Treasury himself does not have time to deal with such matters. It goes to the customhouse. If the matter can be taken from the customhouse to the customs court, the American public can get redress. That is what, in effect, I am asking when I ask that the word "not" be deleted.

Senator WALSH. Are there any other witnesses who desire to appear today?

Mr. RUNALS. Yes; Mr. Chairman.

Senator WALSH. Come forward, please.

STATEMENT OF CLARENCE R. RUNALS, REPRESENTING THE INTERNATIONAL RAILWAY CO.

Mr. RUNALS. Mr. Chairman, my name is Clarence R. Runals.

Senator WALSH. Your residence?

Mr. RUNALS. Niagara Falls, N. Y. I am attorney for International Railway Co. and am on the calendar to speak tomorrow, but at a conference which has just been had we drafted a proposed amendment to section 8 of the bill before you.

This amendment is proposed by John W. Van Allen, Esq., attorney for Buffalo & Port Erie Public Bridge Authority, who appeared before your honorable committee yesterday, or the day before, and by me as attorney for International Railway Co., to which Eli Frank, Esq., counsel to the National Customs Service Association, Mr. R. R. Boynton, chairman, overtime defense fund of National Customs Service Association, who appeared before you this morning, and Mr. Lester Levy, assistant to the president of National Customs Service Association, who are present before the committee, have stated they have no objection.

At the end of section 8 after the words "public interest" add the following:

"Vessel" or "vehicle" as used herein shall not be construed to include a highway bridge or a highway tunnel, nor shall the maintenance or operation of such a

bridge or of such a tunnel constitute the owner or operator thereof a common carrier within the meaning or application of this section.

Daniel Scanlon, Esq., attorney for Thousand Islands Bridge Authority, who has appeared before your honorable committee, has agreed to the amendment in principle, but has not read or heard read the precise language of the amendment.

Mr. Chairman, my attention has just been called to the fact that it may not be clear upon the record that the amendment just proposed is a substitute for the amendment proposed by Mr. Van Allen.

Senator WALSH. Thank you. Are there any other witnesses? If not, the committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 11:45 a. m., the committee recessed until 10 a. m. of the following day, Friday, January 28, 1938.)

CUSTOMS ADMINISTRATIVE ACT

FRIDAY, JANUARY 28, 1938

UNITED STATES SENATE,
SUBCOMMITTEE ON H. R. 8099 OF THE
COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met at 10 a. m., in the Senate Finance Committee room, Senator David I. Walsh (chairman) presiding.

Senator WALSH. The committee will come to order. Mr. Hays.

STATEMENT OF JOSEPH H. HAYS, CHICAGO, ILL., REPRESENTING THE WESTERN ASSOCIATION OF RAILWAY EXECUTIVES

Senator WALSH. Your full name is Joseph H. Hays?

Mr. HAYS. Yes, sir.

Senator WALSH. And your residence is Chicago, Ill.?

Mr. HAYS. Yes, sir.

Senator WALSH. You represent the Western Association of Railway Executives?

Mr. HAYS. Yes, sir.

Senator WALSH. What paragraph of the bill are you interested in?

Mr. HAYS. In section 19, the last two sentences of section 19.

Senator WALSH. Very well.

Mr. HAYS. I am appearing on behalf of the Association of American Railroads as well.

Senator WALSH. Kindly proceed.

Mr. HAYS. I want to state, first, that we frankly do have an interest in the provisions in regard to which I wish to talk, in that we are interested from the standpoint of revenue that might be involved if this provision were permitted to stay in the act. Under the terms of the sentence in question, or the two sentences in question, motor vehicles manufactured in a foreign country, probably Canada, would be permitted to be moved into and through the United States without the payment of duty if moved on their own wheels and under their own power. That is a practice which has developed in the last 4 or 5 years, which is commonly called the caravaning of automobiles, and it is a practice which has grown to very substantial proportions in very recent times. As railroads and as common carriers we are naturally interested in the revenue which we will lose if the vehicles would move in that manner instead of moving by rail.

Under the provisions of the act as it stands automobiles could be moved in from Canada, would proceed then down through Chicago

and by any one of several routes might be moved back into the western part of Canada, or might be moved into San Francisco or other western points for export, or to the Mexican border for the same purpose.

I have here a number of maps, six copies of them, which indicate readily the course which vehicles of this sort might take.

(The maps referred to are on file with the committee.)

Mr. HAYS. It is my understanding that the chief proponents of this provision are those who are principally interested in a bridge at Detroit. However, if vehicles were permitted to move in that manner they would move a very substantial distance through the United States, and although our interest is a selfish one, and we admittedly say so, we do believe that our interest is tested by the public interest in this thing. It may be of interest to the Senators to realize that in some 19 of the 24 Western States this particular type of traffic has been the subject of special legislation. In 19 of those States the States, either under existing statute or under special statutes, exact special taxes or other regulations from those engaged in that business. There have been a number of suits in which the legality of such statutes have been involved and in which the practice of caravaning, or driver delivery of such vehicles, has been specifically described. One of those suits is a suit which was decided by the United States Supreme Court in 1936—May 18—notably the case of *Morf* v. *Bingaman*, and in that decision the United States Supreme Court quotes from the findings of fact from the lower court, and states that the operation of vehicles in this manner constitutes a special use and a special manner of use of the highways.

In that respect it is respectfully called to your attention that the caravan movement as such is generally regarded in the West as more or less a nuisance on the public highways, and it does have certain distinct hazards which are in conjunction with it.

The vehicles are moved in this manner: One car is usually coupled to another by means of a towing bar, with one driver in the tow car which pulls a second car, and the vehicles usually move in fleets or groups. The procession starts out and wends its way, and this naturally creates a hazard on the highway, and as such they have been the subject of special legislation, as I have said. The practice, in general, is not popular and is not very well looked upon, in the Western States at least.

It is also my understanding that this particular sentence has not been inserted in the act at the specific request of the Canadian Government. I am not certain, but I understand that the Canadian Government has placed with the State Department a statement to the effect that the two sentences in question, which particularly pertain to the movement of motor vehicles, go beyond the scope of their original intention, and in their opinion it would be impossible for the Canadian Government to reciprocate with the United States Government in that particular.

We believe that it is a bad practice and that it would serve no public interest, that the vehicles could be readily handled by existing common carriers, and that the special insertion of this particular type of legislation in the act would certainly not be conducive to the best public interests.

Senator VANDENBERG. You mean at the present time American automobiles cannot be caravaned through Canada, say from Detroit to Buffalo?

Mr. HAYS. As I understand it, the American automobiles cannot be so caravaned without the payment of duty. I am not certain about that, Senator, but that is my understanding.

Senator VANDENBERG. That is an important point.

Mr. HAYS. It is also my understanding that if this were kept in the act and finally became law the Canadian Government could not reciprocate in this respect. I will find out about that for you in order to be exact in regard to that fact, Senator.

In that respect, due to our interest in the matter, we have made a careful study of the general business of the caravaning of automobiles. Now, I would not want to burden the record with the introduction of and making a formal part of the record of a study of this character, but for the interest of the members of the subcommittee I have six copies of this, which I would be very glad to leave with you.

(The documents referred to are on file with the committee.)

Senator VANDENBERG. Have you stated how much this business amounts to to the railroads?

Mr. HAYS. I am not in a position to state what it now amounts to. We are not only interested, however, in what it does but in what it might lead to. I do know that the caravaning of automobiles has a traffic importance to the western lines which involves, indirectly to the importers, about $55,000,000 a year. The western lines earn from the movement of automobiles and parts an annual revenue of about $55,000,000.

If the caravan movement grows and continues to grow there is every likelihood of the competition of those who engaged in the practice forcing the movement of all such vehicles over the public highways, which would, of course, involve a very substantial loss to our western lines.

Senator VANDENBERG. A protest filed in behalf of a very important employees' organization in Michigan indicated an estimate of 3,000 cars of freight, under contemporary practice, which would be jeopardized by this.

Mr. HAYS. I think that is a very conservative estimate, Senator.

Senator VANDENBERG. Of course, this involves not only the plants immediately across the line from Detroit. There could possibly be a movement that would come down from Buffalo to the New York port, and then it would also affect the Canadian manufacturing plans in competition with American plants for both Mexican and other export business on the west coast. I would like specific information about the Canadian practice.

Mr. HAYS. Just one moment. I might have this for you. I am just informed that the American automobiles cannot be moved in this manner from Detroit to Buffalo via Canada, and that Canada has denied a permit to a Canadian operator to engage in this practice. I also am advised that the potential traffic involved is closer to 7,000 carloads of freight per year than 3,000.

Senator WALSH. Thank you. We will next hear from Mr. Bates.

STATEMENT OF TODD BATES, SAN FRANCISCO, CALIF, MANAGER, MOTOR CAR DEALERS ASSOCIATION OF NORTHERN CALIFORNIA

Senator WALSH. Your name is Todd Bates?

Mr. BATES. Yes, sir.

Senator WALSH. Your residence is San Francisco, Calif.?

Mr. BATES. Yes, sir.

Senator WALSH. You are manager, Motor Car Dealers Association of Northern California?

Mr. BATES. Yes, sir.

Senator WALSH. What section would you like to address yourself to?

Mr. BATES. I am interested in the same section, sir; as far as it pertains to the caravaning of automobiles.

Senator WALSH. Very well.

Mr. BATES. The automobile dealers of the West have been seriously menaced by this practice for the last 4 or 5 years. We look at it principally from the standpoint of cooperating with various safety leagues, with the directors of motor-vehicle departments of the various States, and for the protection of motorists on the highways. I have personally seen as many as 75 of these cars in a single caravan hooked up with these tow bars, causing a traffic jam for miles behind them by cars trying to pass.

Senator CONNALLY. You mean one string of 75 cars all fastened together?

Mr. BATES. One car driving, towing a car behind it, but a total of 75 cars in one caravan. It occupies quite a large portion of the highway and constitutes a distinct traffic menace.

We also, in California, have served as a dumping ground for indigents who were hired to drive cars to California.

We think, under this particular section of the bill, a great many cars may be exported from San Francisco. We feel these Canadian manufacturers might have an opportunity to drive those cars by these casual drivers to San Francisco for export; and then we would have to absorb those casual drivers, many of whom are a very low order of humanity. We have found them with criminal records, and that sort of thing. That is why we have a particular interest in this bill.

As Mr. Hayes told you, most of the Western States have enacted laws of one kind or another governing caravans, but I think I can say to you very truthfully that a large proportion of the automobile dealers in the West are very much opposed to caravaning as a method of transportation of these cars.

Senator WALSH. Very well, sir. Mr. Nye.

STATEMENT OF BARLOW NYE, ASSISTANT ATTORNEY GENERAL, STATE OF NEBRASKA

Senator WALSH. Your name is Barlow Nye?

Mr. NYE. Yes.

Senator WALSH. You are assistant attorney general, State of Nebraska?

Mr. NYE. Yes.

Senator WALSH. What section of this bill are you interested in?
Mr. NYE. The same section, sir.
Senator WALSH. Very well, sir; you may proceed.
Mr. NYE. I have just finished trying a case in the United States district court at Omaha involving the caravaning of automobiles. That case is called the *Kenosha Auto Transport Company* v. *The Department of Agriculture.* It involves the validity of a statute which we have which regulates and taxes the use of a tow bar, or any other attachment whereby one automobile tows another. The evidence in that case disclosed many of the bad practices of caravaners as a class, that in many instances the tow bars were found to be faulty, that all of them drove at excessive speeds, considering the type of vehicle which they were transporting.

It also disclosed that all of the caravaners habitually travel in fleets, running these units close together, which is a highway hazard. That is with the exception of the Kenosha. The Kenosha claimed they did not do that. However, we have had substantial evidence that they did do it, and that they did follow substantially the same practices, except that each driver is his own boss, there is no captain or manager of the caravan, and of course they do not drive as many units in the caravan.

We are interested in this act which is now before you, thinking that perhaps it might have a substantial bearing on the validity of our act, or any future acts which the legislature might see fit to pass in our State governing the use of highways by caravans. I do not want to say that the act before you will do that, but we say that it might. We have not had time to study it, and we do not want to be precluded from stating our views here.

I think I might also state to you that the other users of the highways in Nebraska, so far as we learned in this case and from our previous experience, are not very much in favor of this caravaning as a practice. Automobile drivers continually complain about meeting these people on the highways and the difficulties that they have with them.

In this case that I have been describing we took 400 feet of motion pictures of caravans and caravan operators showing some of these practices. The pictures were not as good as they might be, due to the fact that most of them were taken during very cold weather, when it was extremely difficult to operate a picture camera from an automobile.

In this case that I tried we also had as witnesses Captain Smith of the Wyoming State highway patrol and a patrol officer from Wyoming who works Highway No. 30 from the Nebraska line to a point some 30 or 40 miles west of Cheyenne. Their experience with these caravans, of course, has been much broader than the experience of our highway patrol, because they have been in existence longer, and of course they offered evidence substantiating what I have told you here and even going further than the things that I have told you. It is safe to say, at least in our opinion, that as the result of the trial of this lawsuit and the evidence that was adduced at that trial, that caravaning is a distinct type of transportation which requires special legislation and control on the highways.

Senator CONNALLY. Mr. Chairman, may I ask the witness a question?

Senator WALSH. Yes; certainly.

Senator CONNALLY. Does your State have these border controls, these stations on the borders on the highways?

Mr. NYE. We call them points of entry.

Senator CONNALLY. Points of entry. That is what I mean.

Mr. NYE. Yes, sir.

Senator CONNALLY. What do you do there? Do you just investigate the license to see that they have got a regular license from the State and things of that kind?

Mr. NYE. Yes, sir.

Senator CONNALLY. To see how much money they have got, that they are going to spend in your State?

Mr. NYE. No, sir; we do not care whether people have any money in coming through Nebraska or not. In fact there are not very many stopped, because most of the people are residents of the State. We are not troubled with tourists as a class.

Senator CONNALLY. I beg your pardon. I thought you were from Nevada. You are from Nebraska?

Mr. NYE. Nebraska. Under our law, as far as the caravaning of automobiles is concerned, we charge them a $10 tow-bar fee. That is where one vehicle tows another. There is a tax on the towed vehicle of $10.

Senator CONNALLY. Why could not you regulate that yourself down there by making the tax higher?

Mr. NYE. I rather think we can. I am not sure just as to what the result of this act is going to be, and that is why I am here, or as to why we, rather, are here, to tell you what we think about it rather than find ourselves in difficulty later on.

Senator WALSH. Very well, sir. Thank you, Mr. Nye. Mr. Bailey.

Senator VANDENBERG. Mr. Chairman, may I have the attention of the Treasury representatives for just a moment on this section? In the brief presented by Mr. Spingarn appears this sentence:

> Section 19 will give corresponding authority to the United States to do what the Canadian authorities are already doing in connection with the shipment of goods between two points in the United States through Canada.

That is specifically denied by the testimony of Mr. Hays. What is the fact as to that?

Mr. JOHNSON. That comment, sir, relates to the first sentence running from line 7 to line 11 on page 24. The Canadian authorities do permit the transportation of imported merchandise otherwise than by bona fide common carriers, where no common-carrier facilities are reasonably available.

Senator VANDENBERG. What is your statement as to whether they permit this caravaning?

Mr. JOHNSON. The Treasury Department has been informed that, except for individual motorcars driven under their own power, there is no provision in the Canadian Customs Act or the regulations issued thereunder for treatment similar to that proposed by the last two sentences of section 19, lines 11 to 19 on page 24 of H. R. 8099.

STATEMENT OF CLYDE SCOTT BAILEY, WASHINGTON, D. C., REPRESENTING THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Senator WALSH. Your full name is Clyde Scott Bailey and your residence is Washington, D. C.?

Mr. BAILEY. That is correct.

Senator WALSH. You are appearing here for the Public Service Commission of Wisconsin?

Mr. BAILEY. That is correct.

Senator WALSH. You want to discuss section 19?

Mr. BAILEY. I have been asked by the Public Service Commission of Wisconsin to appear here and voice its objections to certain provisions of section 19. The objections which that commission entertains are so well stated in the letter of instruction which I have received from it that I would like the privilege of reading it. It is very short and will constitute almost my complete statement. The letter is as follows:

PUBLIC SERVICE COMMISSION OF WISCONSIN,
Madison, Wis., January 25, 1938.

Mr. JOHN E. BENTON,
General Solicitor National Association of Railroad & Utilities Commissioners, Washington, D. C.

DEAR MR. BENTON: There is being heard this week before the Senate Finance Committee H. R. 8099, customs administration bill, which would authorize the caravaning of automobiles in bond from a point in Canada to another point in Canada through the United States, without the payment of duty. We would like to have you or Mr. Bailey note our objection to this bill. If we understand it correctly, it would permit the use of our highways for long distance transportation in competition with railroads without the support of any finding by any public tribunal of public convenience and necessity. It would therefore permit of a broader privilege than is extended by the United States to its own citizens, and one which, so far as interstate commerce is concerned, and for the most part, intrastate commerce, has been legislatively decreed as being a privilege to be exercised only when required by public convenience and necessity or at least consistent with the public interest.

I have not the details or provisions of the bill before me, but the foregoing will be sufficient to give you at least a slant on our attitude and position toward it, and if it makes the provision which we are informed that it does, we are opposed to its passage.

Very truly yours,

P. H. PORTER, *Counsel.*

I have received no communications from any other State public utilities regulatory commission, but it is my judgment that if the provisions of section 19 had been called to their attention they would entertain views somewhat similar to those just expressed on behalf of the Public Service Commission of Wisconsin.

Senator VANDENBERG. I might add for the record, Mr. Chairman, that I have received two voluntary letters from the Members of the House of Representatives who voted for this bill and who stated it was passed in a hurry. Inasmuch as they do not have the same freedom of debate over there as we do, and they wish to be recorded against this section and hope it will be deleted.

Senator WALSH. Mr. Simons.

STATEMENT OF E. H. SIMONS, EL PASO, TEX., REPRESENTING NUMEROUS CHAMBERS OF COMMERCE OF TEXAS AND ARIZONA

Senator WALSH. Mr. Simons, your name is E. H. Simons?

Mr. SIMONS. Yes, sir.

Senator WALSH. Your residence is in El Paso, Tex.?

Mr. SIMONS. Yes, sir.

Senator WALSH. You represent the El Paso Chamber of Commerce?

Mr. SIMONS. Yes, sir; as executive vice president and general manager.

Senator WALSH. What sections of this bill are you interested in?

Mr. SIMONS. Section 31 of H. R. 8099.

Senator WALSH. Very well, you may proceed.

Mr. SIMONS. Mr. Chairman, I represent the Chambers of Commerce of El Paso, Tex., Douglas, Ariz., Nogales, Ariz., Alice, Tex., McAllen, Tex., Weslaco, Tex., Harlinger, Tex., Laredo, Tex., and the South Texas Chamber of Commerce, San Antonio.

We desire to protest section 31 of H. R. 8099, which is a bill to amend the provisions of the Tariff Act of 1930, and ask that this committee give some consideration to a form of reciprocal amendment that will permit the entry of merchandise as now specified, providing the countries of contiguous territory grant their nationals the same privilege when returning from the United States.

We predicate that request upon the fact that the southern border is entirely different from the northern border. Our business down there is one of tourists, thousands of tourists yearly. There is an average of 800 to 1,000 cars a day that pass through El Paso east and west. The class of tourists is a class that is unable to make these jaunts to Europe and other countries; they are middle-class people who load themselves into the car and make a trip to the West, and they come into those border towns.

Senator CONNALLY. May I ask you a question, Captain Simons? I am sure the Senator from Michigan is also interested in this. Your idea is that if American tourists go over to Mexico and buy some curios, and things of that kind, we should let them come back in, within a reasonable period at least, free of duty provided Mexico accords to their citizens the right to come over on this side and buy and go back, is that the idea?

Mr. SIMONS. Yes, sir.

Senator CONNALLY. You want a reciprocal arrangement?

Mr. SIMONS. We want to make it absolutely reciprocal, because the income from tourists is $9,000,000 to $12,000,000 annually. That is not all going to the hotels and tourist camps. A volume of it is going to the retail trade. As you gentlemen know, that tourist dollar broken down does give to the retail trade in the United States a fair average. That man is going across the border and he is bringing back some things that perhaps he should not, but the trade from Mexico that comes into our towns, that is, buying the high quality merchandise, gets dresses and that sort of thing, is certainly worth the few insignificant items of curios, and things of that character, that come back with our tourists.

Senator VANDENBERG. Then you do not have the problem that we have on the northern border.

Mr. SIMONS. We do not, sir.

Senator VANDENBERG. Where your own American citizens cross the border for the purpose of doing almost continuous daily trading.

Mr. SIMONS. Yes, sir; but that comes, Senator Vandenberg, under the $5 exemption, because there is a volume of that, and we know from your Detroit report the majority of that was on an average of $4.75. Your customs collector is authorized, under the law here on page 10, to grant that, and that can be granted every day in bringing back the $5 worth of merchandise. That is the local resident who is doing it.

Senator VANDENBERG. And that practice is general with you as it is with us?

Mr. SIMONS. Well, I think it is perhaps not so great down there, because the population is not dense, but on a parity I would say it was.

Senator CONNALLY. Let me ask you, there is not the same market, though, in Mexico?

Mr. SIMONS. No, no.

Senator CONNALLY. There is not the same market for finished goods, and things of that kind, that there would be in the case of Canada?

Mr. SIMONS. No, sir.

Senator VANDENBERG. I would not think so.

Mr. SIMONS. The type of purchases made in Mexico, of this class that you speak of, are perhaps in the food line, such as vegetables, because you have a large group of Chinese that live on that border, and, of course, they export through the customs a number of vegetables, cheaper cuts of meats, unrefined sugar, beans, and similar items which this 45 percent Mexican population buys, but no larger items. The question of bringing back any large quantities for resale is very minute down there.

Senator VANDENBERG. Would you say there is a constant $5 exemption for everybody all the time?

Mr. SIMONS. It is so set up here, and I think it prevails in many ports. You understand that Mexico, while it makes some concessions to those in the border towns, insofar as all the residents in Juarez are concerned who own automobiles—and there are perhaps 2,500 to 3,000 cars there owned by those businessmen, a city of 45,000 people—those cars were all purchased in El Paso, and they were permitted to retain them in Juarez without the import duty being placed upon them by the Mexican Government, providing they do not go a distance of 10 miles below the border, as the second station. If they do, they are, of course, subject to the normal import tax of Mexico.

Senator VANDENBERG. I would like to straighten out this $5 exemption business so as to make it certain. Will the Treasury please make a statement on that?

Mr. JOHNSON. There is a discretion granted by regulation to each local collector of customs to permit the entry without duty of not more than $5 worth of goods for any one day, provided the articles are for the personal or household use of the importer. Under that exemption the collector at El Paso will permit a Mexican resident of the United States to bring back not more than two kilos of meat. The full $5 is not allowed in that case. He will not permit them to bring in more than, say, 2 pounds of sugar or 3 pounds of beans.

On the northern border the $5 exemption is seldom allowed in the

larger cities, but in the rural districts where the farmers are far from an American trading center it may be allowed occasionally. If the price differentials on the Canadian side change too much so that it becomes evident that people are going to Canada to get bargains the allowance would be discontinued.

Senator VANDENBERG. Well, there is nothing about the $5 allowance which could be used in one way or another to help the Detroit situation that Mr. Boyd discussed the other day; it does not affect it one way or the other.

Mr. JOHNSON. It would provide some little relief in cases where the 48-hour limitation, even at Detroit, might cause some administrative difficulties. It will not work to the disadvantage of American businessmen, as I see it.

Senator VANDENBERG. I am sorry for interrupting you, Captain. Go ahead.

Mr. SIMONS. This tourist business goes over there, and they are just after those smaller things. They do not have any of the manufactured products that you have to contend with, such as you have in Canada, because Mexico is not producing them. The cost of transporting from European countries for sale at the inland ports is prohibitive, so that is out of the question. If you buy anything there you will find the majority of it—except perfumes—or you may buy a German-made camera over there, but they can buy an American-made camera in Juarez cheaper than in the United States, slightly cheaper, but it is in competition—there is not a great deal of that, not in comparison to the amount of business that we are trying to develop from those Mexicans down a thousand miles below the border who come up there and go into our stores and buy. It is not anything unusual for one of those ranchers' or miners' families to come up there and spend $2,500 to $3,000 in purchases alone, in one of the department stores; $450 coats are in order. Well, now, that class of merchandise is being sold in our stores on the border, and it far outweighs this other classification that comes back in the hands of a few tourists.

If they did not have the local rule of purchasing under the $5 and if Mexico would give us a reciprocal arrangement down there, something which the committee could draft that would put us in a position there where we could say to Mexico, "Yes; we will permit this, but you should permit your nationals to come over here and buy likewise with the $100 exemption and take it back."

Senator VANDENBERG. Have you undertaken to prepare the text of a reciprocal amendment? I would like to see what it looks like.

Senator CONNALLY. I will ask Mr. Rice to sit up here and hear this evidence, and see if he can draw one for me.

Senator VANDENBERG. It would suit us up North if it works the way I understand you to describe it.

Mr. SIMONS. Senator, our situation is entirely different from your Detroit situation. I know what you are up against there. You are up against the Canadian-made articles that are much cheaper, their labor costs are lower, and everything else. You have got serious problems. Our problems are not analogous to that, our problems are entirely different.

Senator VANDENBERG. I would like to satisfy both situations.

Mr. SIMONS. I think it could be done by in some way making up that reciprocal agreement, providing the countries accept it. At least, it would give us the opportunity.

Senator CONNALLY. What would happen if they did not accept it?

Mr. SIMONS. Well, we still retain, Senator Connally, the club. Perhaps it is not well to use the club.

Senator CONNALLY. Would you change the present law by adding a section?

Mr. SIMONS. Yes; the proviso.

Senator CONNALLY. Let me get your idea, Mr. Simons. Your idea is that under the present law they bring back, as I understand, $100 worth of merchandise, but they have to do so within 24 hours after they go over?

Mr. SIMONS. You are speaking of the present law?

Senator CONNALLY. Yes, sir.

Mr. SIMONS. That is good for $100 every 30 days.

Senator CONNALLY. That is what I am getting at.

Mr. SIMONS. Yes.

Senator CONNALLY. Do they have to bring it within 24 hours after they go into Mexico?

Mr. JOHNSON. No, sir; there is no provision as to the duration of the stay abroad at the present time.

Senator CONNALLY. They can only bring in $100 every 30 days?

Mr. JOHNSON. Yes.

Senator CONNALLY. Do you want to leave that as it is?

Mr. SIMONS. Yes; and then say:

Provided, however, Unless the country contiguous grants the same privilege to their nationals returning from the United States.

Senator CONNALLY. Suppose they do not?

Mr. SIMONS. Then I would say that the provision for the 48 hours shall apply.

Senator CONNALLY. That they must bring it back within the 48 hours?

Mr. SIMONS. No, sir; the provision for the 48 hours shall apply; they shall have to remain in the country 48 hours. Perhaps that is not good language to use in speaking of a favored nation.

Senator CONNALLY. In other words, they cannot bring it back within 48 hours. They do not have to stay; they can do what they please, but they cannot bring it back in less than 48 hours?

Mr. SIMONS. Unless they agree to it, sir.

Senator CONNALLY. Go ahead. Does that complete your statement?

Mr. SIMONS. If that was put into effect, and then we have the elimination of the $5, I think the problem would be wholly solved on that border. I have every reason to believe that the southern Republic is going to step right into the picture and meet that situation, because the Confederation of Chambers of Commerce of Mexico have met on it on several occasions and indicated that they would take a forward step and go to the Government and ask for a reciprocal arrangement of this character; and if we could get that, then we are protected from both sides.

Senator CONNALLY. You said something about doing away with the $5 provision. Are you concerned with that?

Mr. SIMONS. I am not so much concerned with that as I think perhaps other ports would be. It is a dangerous procedure. I am concerned with it because it is, of course, detrimental to the smaller merchant who is losing a vast volume of trade, and particularly that low-earning wage trade that goes across; and as you know, Senator, a population of 45,000 Mexicans with a low average income has to turn in some of it for its existence. I do not think it is fair.

Senator CONNALLY. Do not a great many people live in Mexico and come over and work in the United States?

Mr. SIMONS. No, sir; not any more.

Senator CONNALLY. And is that not true vice versa? Do some of the Americans work there?

Mr. SIMONS. We do not have many there now because of their restrictions.

Senator CONNALLY. How about living in the United States?

Mr. SIMONS. We have almost all the prominent Mexicans who have business in Mexico living over in the United States, who own their own homes there.

Senator CONNALLY. They can buy $5 worth of merchandise every day in Mexico then and bring it back home with them?

Mr. SIMONS. Very few of them do it, sir. I want to say to you, gentlemen, that these customs men are pretty well on the job. Perhaps the volume is not as great as it is on the northern border, but if you find a man that goes over there and comes back with three or four items that look unusual, they tag him right quick and find out all they can about him, whether he is bringing that back for resale, or what he wants it for. They are alive to the situation down there. They are doing everything they can to protect the Government.

Senator VANDENBERG. You do not have a State sales tax?

Mr. SIMONS. No, sir; we do not.

Senator VANDENBERG. Would you have a different problem if you had a State sales tax?

Mr. SIMONS. Yes. We do not have a serious situation in the way of liquor because it is not sold by the drink. They do collect on every bottle that comes over. They permit one bottle to come to Texas once a month, and the State of Texas collects 24 cents tax on every bottle coming over. That is all I have.

Senator CONNALLY. Thank you, Captain Simons.

STATEMENT OF PHILIP A. KAZEN, LAREDO, TEX., REPRESENTING THE LAREDO CHAMBER OF COMMERCE, AND OTHER CHAMBERS OF COMMERCE ON THE MEXICAN BORDER

Mr. KAZEN. My name is Philip A. Kazen. I represent the Laredo Chamber of Commerce in particular, and with Captain Simons I represent all the other chambers of commerce on the Mexican border already mentioned.

I am speaking against the 48-hour provision of section 31 of H. R. 8099, and the position of the Laredo Chamber of Commerce is this: We are opposed to that portion of the bill which provides that for a person to be entitled to bring into the United States merchandise duty free as a tourist he must have remained in a foreign country not less than 48 hours.

We are in favor of this additional amendment to be made to the bill in place of that, that American tourists returning from a foreign contiguous country be permitted to enter $100 worth of goods duty free if the country in which they purchase their products gives its tourist citizens the same privilege of duty-free importation of American goods in equal or equivalent value.

Now, as I understand it, House bill 8099, as passed, reiterates the same now existing provision of our tariff law of 1930, paragraph 1798, which, in effect, grants to residents of the United States who go abroad the right to import, on their return, goods free of duty up to the value of $100, except that it goes further and defines a tourist or returning resident of the United States as a person who has remained outside the territorial limits of the United States not less than 48 hours.

The reasons which we have been told prompted the passage of this bill in the House are that while it is conceded to be general in application it is for two purposes only—to prevent petty smuggling, and, second, to give protection to American merchants residing on the American side of the Canadian border from competition of merchants established on the Canadian side of the American border. As we have been led to believe, I think that those are the two reasons for passing such a bill. Now, in our opinion, such a bill really does not accomplish the ends sought any more than the existing laws which we now have would accomplish those ends.

Now, let us take the first purpose—to prevent petty smuggling. We, on the Mexican border—and Mr. Simons, of El Paso, who has already testified, and I represent practically all the chambers of commerce and all the American merchants from Brownsville, Tex., to San Diego, Calif.—cannot see the applicability of the provisions of the 48-hour clause to the prevention of petty smuggling. On the contrary, any restriction of the free intercourse of trade between the two countries would have a tendency to increase and not diminish petty smuggling. It is just human nature for a party to buy goods wherever they cost him less, everything else being equal; and if a returning resident would misstate the purpose for his trip to Canada and say that he went merely for pleasure or business, and once there as an incident to his trip he bought the articles which he now declares, what would prevent him from misstating the amount of hours that he has been outside the territorial limits of the United States?

Now let me make this statement: I think that the Treasury Department in the past has ruled that the $100 exemption to a returning resident is allowed provided that he purchased those goods as an incident to his trip to a foreign country and did not go there for the purpose of buying the goods; that if he went there for the purpose of purchasing those goods, he would not be entitled to the exemption. Is that correct?

Mr. JOHNSON. That is correct, sir.

Senator VANDENBERG. Of course, it is pretty difficult to explore the purpose of the traveler.

Mr. KAZEN. That is correct, sir.

Senator CONNALLY. On the other hand, it would be pretty easy for the customs men to say "No," and it is hardly worth a lawsuit.

Mr. KAZEN. That is correct, sir. If a returning resident would misstate the purpose for his trip to Canada and say that he went

merely for pleasure or business and once there as an incident to his visit he bought the articles which he now declares, what would prevent him from misstating the amount of hours that he has been outside the territorial limits of the United States?

Senator VANDENBERG. He could not do that, because there is a record of when he goes and when he comes.

Mr. KAZEN. Is our Government going to check out every tourist leaving the United States and then check him in again? If so, the enforcement of this provision, where a tourist goes out through one port and comes in through another port, in our opinion, would be almost prohibitive, and, in our opinion, it would cost the Government a lot more money to enforce that provision than the amount of added revenue and loss of profits of the merchants.

Senator VANDENBERG. You do not understand our problem. 15,000 or 20,000 a day will go across within a stretch of 10 miles and come back, and they will do that every day.

Mr. KAZEN. I am coming to that, sir. I have those points categorically, but I will come back and answer that, if you please, sir.

In our opinion the amendment is discriminatory and unfair because it is designed to protect only a small class of merchants in the United States, namely, those living on the Canadian border. Now I do not think there is any pretense made that this 48-hour provision is designed to protect any of the merchants of the Middle West, or any of the merchants that live 100 or 150 miles from the Canadian border, or the Mexican border. I will come to the Mexican border in a little while, because our situation is so different down there that this cannot possibly apply to us. I do not think it applies to any other merchant except the Canadian border merchant, because usually if a person takes time to go to Canada, if he drives an appreciable distance to Canada, he is going to remain there more than 48 hours. Now if a man goes to Europe, or Cuba, it usually takes him more than 48 hours to make the trip and come back, and naturally he will be out of the United States more than 48 hours. So the provision of the law would not apply to him at all. Therefore none but Canadian border merchants would really get protection, and this bill is only designed to help them, and on that basis we feel that the bill is discriminatory, or the amendment is discriminatory, because it is not even designed to protect all the merchants on the Canadian border, and in actual practice would protect very few, if any, of the American merchants on the Canadian border, for this reason: House bill No. 8099 incorporates in its provisions a customs regulation now in effect and which is enforced generally in all ports of entry.

Now I did not know that it was not being enforced in Canada until awhile ago when the representative of the Treasury Department said that it was not in general application in the big cities, although it was in small communities along the Canadian border. But I know this, that in Laredo, Tex., it is the practice for the customs authorities to allow under the $5 provision residents of Laredo, Tex., to go across the river and buy merchandise up to the value of $5. Under this House bill 8099 that provision is carried forward, and the collector of customs is still given that authority. We feel that that is a very salutary provision in the law. We feel it is a good provision, giving the collector of customs the right to do that within their discretion, for several reasons. In the first place, it

does prevent petty smuggling. It is just human nature for a person to try to buy merchandise wherever he can get it cheaper.

You take the situation down there in Laredo. Our people go across the river and they do buy meat. As a matter of fact, 60 percent of the meat that is consumed in Laredo, Tex., is bought in Nuevo Laredo, for the reason that for 17.5 cents of American money they can buy 2¼ pounds of choice meat down there. It is perfectly all right, because the collector of customs on the Mexican side also uses his discretion and allows the residents of Nuevo Laredo, Mexico, to come over here to Laredo, Tex., and purchase goods from us.

If the authority is given to the collector of customs there and on the other side it is placing it more or less on a reciprocity basis. If the Mexican collector of customs uses his discretion and allows Mexicans to come over here and purchase goods, we feel it is discretionary with our collector of customs to do the same thing, and there will be an intercourse of trade there. If that provision is still in effect I think that provision, more than the $100 provision, would take care of your first purpose—that is, to prevent petty smuggling.

Now, under that provision it gives the collectors of customs discretionary authority to pass free of duty personal or household effects valued at not more than $5 which accompany a person arriving in the United States. No limitation as to the duration of the foreign journey is included in this proposal, but the $5 exemption would not be available to the same person more than once in the same day.

Now, I understand we have a letter from the Treasury Department. The reason that the Treasury Department, so we are told, had that provision inserted—at first I think it was carried as a regulation, it was not a law, it was just a regulation—the reason for that is this, that if a man goes across the river, for example, and brings meat with him and he wants to pay a duty on that meat, or goes across the river and buys a kilo of meat, a kilo of beans, a kilo of rice, or anything else, or a chair, or hand-made shoes, and comes across and he wants to pay duties on that, the time required in making out the invoice, the entry and everything else would be a lot more than the duty which that individual would pay, and I believe that the Treasury has felt that it would be cheaper for them in the long run to allow the $5 exemption.

It is a good provision to allow the $5 exemption, in order not to clutter the customshouse with a lot of people who are bringing in little things every day, because the duty would be so small that it would not compensate the Government in not allowing it.

Senator CONNALLY. Let me ask you, Senator—if I may interrupt Mr. Kazen—the people that you are complaining of are the American residents of Detroit going over to Canada and buying merchandise and coming back?

Senator VANDENBERG. That is right. The average purchases amount to nearly $100,000 a week. That not only affects private industry, the merchandising industry, but particularly affects the State revenue. They have a 3-percent sales tax in Michigan, you see.

Senator CONNALLY. Yes.

Senator VANDENBERG. If we can find a solution such as Captain Simons suggested, which would permit the southern border to be treated the way it wants to be treated you would not object to our treating the northern border the way we want to treat it, would you?

Mr. KAZEN. That is perfectly all right with us.

Senator CONNALLY. We could make it applicable to a certain degree of latitude, something of that kind.

Mr. KAZEN. May I continue, please, sir?

Senator CONNALLY. Yes.

Mr. KAZEN. Therefore these people, under the $5 provision as now carried forward in House bill 8099, could buy cloth to be tailored into suits, they could buy shirts, hats, shoes, groceries, and even a ready-made suit of clothes brought in piecemeal under the $5 provision, assuming the amendment is effective for the purpose for which it was designed.

We feel it would be discriminatory to the rank and file of the American tourists who cannot afford an extended trip of any duration, and to those American workers who visit either Mexico or Canada on week ends, from Saturday to Sunday evening, which would be less than 48 hours, and thus deprive them of the exemption.

Now, for example, there are a lot of Americans who go to Canada over the week end and who cannot afford to stay there the 48 hours; they do not get the $100 exemption, while the man who does not have to work, the man who has money enough to stay in Canada more than 48 hours, he would be allowed the $100 exemption. The man that has to work and cannot go to Canada or Mexico except for a small period of 48 hours, would be discriminated against and he could not bring in the $100 worth of merchandise under the $100 exemption.

However, the greatest objection to the 48-hour provision which the American merchants on the Mexican border have is that if such a provision becomes a law the Mexican Government will immediately retaliate by passing a similar law, and this will have the effect of killing, commercially speaking, both the Mexican and American cities along the Mexican border. At present, taking my town as a typical border town, we lend every effort to tourists who wish to visit Nuevo Laredo and the interior of Mexico. Very many people come to Nuevo Laredo, Mexico, across from Laredo, Tex., to spend the week end and buy curios, souvenirs, and hand-made shoes, and so forth.

Now, if Mexico were to pass a similar law with a 48-hour provision, that would mean that about 70 percent of the tourists who are now coming to purchase goods in Laredo, El Paso, and all the other border towns, would not come there, because they come primarily to purchase American goods. If they cannot take them back unless they remain there 48 hours they are not going to come, because most of them are working people, people who work for the Government, people who have little grocery stores down there and who can drive down to Laredo, arrive there on a Saturday noon, do the shopping Saturday evening and go back Sunday. Now for that reason, if this 48-hour provision is general in its application and goes ahead and applies to Mexico also, Mexico will immediately retaliate with a 48-hour provision, which will kill what little tourist trade we have now.

Senator VANDENBERG. In that question I would like to call your attention to the fact that that criticism does not apply in respect to the Canadian border, because Canada has the 48-hour provision already.

Mr. KAZEN. All right, sir. Could not this be worked out, that the collector of customs, or the Treasury Department, be given authority, for example, to limit them in their discretion, by a regulation; that if Canada had that regulation why not enforce against Canada the same restriction by regulation and not put it in the law, or make its application general, but give to the Treasury Department discretionary power to discriminate against those who discriminate against us? I think the tariff law is full of those instances. I think that that could be worked out by allowing the Treasury Department to do so, rather than passing a general law.

Senator CONNALLY. Allowing them to do it and getting them to do it are two different things.

Senator VANDENBERG. They are allowed to mark lumber; in fact, they are ordered to mark lumber, but they do not do it.

Mr. KAZEN. On the other hand, sir, we would be favoring one section of the United States while we would be discriminating against the other, and that is the Mexican border, because Mexico does not have that provision at the present time, and if we do pass it it is very sure that they are going to do the same thing.

Now, the next thing that we want, really, that the American merchants on the Mexican border want, is a provision in the law which will state that American tourists returning from a foreign country will be permitted to enter $100 worth of goods duty free if the country in which they purchased the products gives its tourist citizens the same privilege of duty-free importation of American goods in equal or equivalent value.

At present we would like to place this on a reciprocity basis, that if our tourists go to Mexico and buy $100 worth of merchandise, that Mexico should allow their tourists to travel to the United States and buy a similar amount of merchandise.

Now, it is only by the grace of the good Lord that we have got a collector of customs in Nuevo Laredo, Mexico, who uses a wide discretion and who allows the Mexican tourists to come to the United States and purchase goods and take them back. He does not allow anywhere near what we allow, but he does allow sufficient to where we are getting a nice trade out of Mexico, but not in recompense for the trade that they got out of us. However, before he came down there they had another collector of customs who was very strict. Now they do not have any law; it is just within the discretion of the collector of customs as to whether he wants to grant it or not. Now this other collector of customs did not want to grant the purchases to the tourists who resided in Nuevo Laredo, Mexico, to such an extent that there were 23 Mexican tourists who had complaints filed against them for smuggling, or forced to pay duties for taking a doll, a loaf of bread, a pair of silk stockings, and other things.

However, attention was brought to the customs department in Mexico City to this situation, and our collector of customs then refused to use his discretion in their favor also and did not allow our residents to go down there and buy any goods from Mexico, and the bridge was closed for 3 days. When that was done they immediately got up in arms, the chamber of commerce in Neuvo Laredo got up in arms against the collector of customs that they had down there. They filed a complaint against him to Mexico City, and he was removed. That is where that safety valve comes in about the $5

discretionary power of the collector of customs. When they refused to do that, our collector of customs refused to let in their merchandise, and the result was that their collector of customs was put out and another one put in. However, they have no law, and we would like to be protected there.

The law which they do have provides that "passengers" may take in with them personal household effects and clothing, but this has been interpreted to mean "used" household effects and "worn" clothing and not new, and if the "passenger" happens to be a returning resident of the interior of Mexico, that clothing which he had before he left the country only is admitted duty free.

Now, as to the balance of trade, our tourists in 1931 spent $27,000,000 in Mexico. In 1932 our American tourists spent $31,000,000 in Mexico. In 1933 our American tourists spent $24,000,000 in Mexico. In 1934 our American tourists spent $37,000,000 in Mexico, and in 1935 our American tourists spent $39,000,000 in Mexico, or a total of $148,000,000 that was spent by the American tourists in Mexico alone.

Now, the Mexican tourists who come over here cannot possibly buy anything like that, because they do not have that provision. It is simply within the discretion of the collector of customs. In Neuvo Laredo, Mexico, the collector of customs uses wide discretion, but there is no assurance that he will keep on using that wide discretion. I do not know how they do it in Juarez or in any of the other places, but what we want is assurance that they will continue to use their discretion and allow their tourists to come over here and buy goods in sufficient quantities or in the quantities that our American tourists buy them in Mexico.

Senator VANDENBERG. Let me ask you a question.

Mr. KAZEN. Yes.

Senator VANDENBERG. On January 27 a witness, assuming he appeared for the Texas Retail Dry Goods Association, appeared in favor of the 48-hour exemption. What would you say about that?

Mr. KAZEN. Representing the Texas Retail Dry Goods Association?

Senator VANDENBERG. Yes; the Texas Retail Dry Goods Association.

Mr. KAZEN. What is his name?

Senator VANDENBERG. Mr. Boyd, coming from Detroit and speaking in behalf of a number of associations, and he included the Texas Retail Dry Goods Association in his list.

Mr. KAZEN. I do not know about the Texas Retail Dry Goods Association, but we represent practically all of the chambers of commerce on the border in Texas.

Senator VANDENBERG. What is the Texas Retail Dry Goods Association?

Mr. KAZEN. I do not know; I have never heard of them.

Senator CONNALLY. That is going a little far, having a man in Detroit representing a Texas retail dry goods association.

Senator VANDENBERG. He presented his credentials. I wondered if there was a disagreement on this subject.

Mr. KAZEN. No, sir; we are all in accord on the Mexican border.

Now, here is another thing. Mexico allows a lot of automobiles that are bought down there in Laredo, Tex., to be taken to Neuvo

Laredo, provided they do not go out of the 5-mile limit in Neuvo Laredo, they can be bought in the United States, and they have a Texas license. Now, if this 48-hour provision comes into effect that will be wiped out, because they will immediately retaliate. The purchase of automobiles is a considerable item every year. Practically all the automobiles in Neuvo Laredo are purchased in Laredo, Tex.

Senator CONNALLY. And they let them keep them in Neuvo Laredo and use them without paying an import duty?

Mr. KAZEN. Yes; without paying an import duty, and they let them use them in Neuvo Laredo. They have Texas licenses, they pay their license fees in Texas.

Senator CONNALLY. Do not most of these cars come from Detroit?

Mr. KAZEN. Yes, sir; practically all of them were made in Detroit.

Senator CONNALLY. Any way, in Michigan.

Mr. KAZEN. In Michigan. There are a lot of Buicks, Pontiacs, Chevrolets, Fords, and everything else.

Now, I have just returned from Mexico City where I took up this matter of reciprocity with the Confederation of Chambers of Commerce of Mexico. We had a meeting with the board of directors down there in Mexico and they were very frank in telling us that they were not going to do anything on the reciprocity measure until they decided just what was what, I mean whether this 48-hour provision would be applied as to them. Now, we have assurance from the Confederation of Chambers of Commerce, and, as a matter of fact, they had a directors' meeting there, and the directors approved our theory of reciprocity, they agreed to recommend to the President and the Secretary of the Treasury in Mexico to pass a provision entitling Mexican tourists coming to the United States to return with not $100 worth, but 200 pesos worth of goods duty free, into Mexico, as a concession to us. However, I have just received a telegram from Mr. Medill, the secretary-general of the Confederation of Chambers of Commerce of Mexico, saying that they would advise us definitely this week end as to whether or not that provision has passed by the Secretary of the Treasury. We feel that provision is going through, because the Confederation, which is a powerful organization in Mexico, has already approved it. We would like, however, in case it does not go through, and in order to kind of help them along in their decision, to have something in our law to place this $100 provision on a strictly reciprocal basis.

Senator WALSH. Is Congressman Mott here? I understand he wanted to be heard for 5 minutes.

STATEMENT OF HON. JAMES W. MOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Representative MOTT. Mr. Chairman, I wish to make a very brief statement on paragraph (J) of subdivision (3) of section 3 of this bill H. R. 8099, particularly as it involves lumber. Under existing law imported lumber is required to be marked with the country of its origin. The law has never been enforced and hundreds of millions of feet of imported lumber have been brought into this country, and the marking regulations completely ignored. The lumber purchasers of the United States have no way of telling whether lumber

purchased in Los Angeles, San Francisco, or other Pacific coast ports was made in this country or was made in Manchuria, Russia, or Canada, or some other foreign country.

Paragraph (J) of subdivision (3) of section 3 of this bill provides that if a commodity has been imported into this country in substantial quantities for a period of 5 years, the Secretary of the Treasury may publish that fact in the Treasury Decisions, and thereupon the law becomes void so far as the marking requirement of that commodity is concerned, and the marking regulation does not need to be adhered to. In other words, if the Secretary of the Treasury finds that the marking law has been ignored for a period of 5 years, he may legally continue to ignore it and thereby effectively repeal the law.

This bill came up in the House under suspension of the rules, and, as you know, the rules forbid the consideration of an amendment when a bill is brought up in that manner. I had submitted to Mr. Cullen, of New York, who had charge of the bill on the floor, an amendment to strike paragraph (J) of subdivision (3) of section 3, so as to continue to require the marking of lumber. Several other amendments were submitted, and Mr. Cullen assured us that, although the amendments could not be considered then, the matter would be submitted to this committee in the Senate and would be taken care of.

I want to call your attention to a fact which seems to me to be rather a peculiar one, and that is when this bill was being considered in the committee in the House the Treasury made no justification whatever of this provision, or this amendment, and that in the report of the Ways and Means Committee on the bill this important and far-reaching amendment is not even mentioned.

I may say further that, so far as the proponents of this bill in the House were concerned, there was no objection to the amendment, and in that respect I would like to cite the committee to page 11941 of the Congressional Record of August 19, 1937, where this amendment is referred to. Several people on the floor had spoken to Mr. Cullen, who was in charge of this bill, about corrective amendments that they wished to have considered here in the Senate, because they could not, under the rules, be considered in the House. Mr. Cullen said:

Mr. CULLEN. I yield to the gentleman from Oregon.

Mr. MOTT. I have submitted to the gentleman from New York an amendment to strike out subdivision (j) of subsection 3 of section 3, on page 4.

Mr. CULLEN. Yes; I have that amendment.

Mr. MOTT. Is that the same amendment my colleague, the gentleman from Oregon [Mr. Pierce] has submitted?

Mr. CULLEN. It is practically the same kind of an amendment. I promise the gentleman these amendments will be considered in the Finance Committee of the Senate.

Mr. MOTT. Do I understand the gentleman from New York has no objection himself to striking out this particular section in the other body?

Mr. CULLEN. No, none whatever; because the Treasury Department has practically agreed on it.

It was admitted that there was no excuse whatever, and no justification for a provision of this kind which would authorize the Secretary of the Treasury to continue to violate a law which had been violated by him for a period of 5 years.

If this is not corrected so far as lumber is concerned, the lumber industry, particularly on the Pacific coast, and I daresay in other places in the country, will be very, very seriously injured. In my own State of Oregon lumber and its allied industries constitute 60 percent of the entire industrial pay roll of the State. We would rather not have lumber imported into this country at all, but if it is to be imported, and it is imported under existing law, we would at least like the provisions of the law requiring the marking of lumber with the name of the country of its origin to be adhered to.

Senator VANDENBERG. As I understand it, you have been trying to get the Secretary of the Treasury, ever since the 1930 act was passed, to enforce the lumber-marking provision and he has declined to do it; is that correct?

Representative MOTT. That is correct.

Senator CONNALLY. Both under the Hoover administration and this administration?

Representative MOTT. The political complexion of the administration has made no difference. They simply refused to enforce that law, and we think it ought to be enforced. I think it ought to be enforced with respect to all commodities, but we are particularly concerned with lumber.

Senator VANDENBERG. And this particular section of the proposal would validate the refusal to enforce the law previously and would make his previous refusal a legitimate rule of conduct hereafter?

Representative MOTT. That is the precise effect that the inclusion of this amendment would have, so we ask that this subdivision be stricken out entirely. If the committee cannot see its way clear to strike out the whole subdivision, then we would like an exemption or exception made in the case of lumber. As I say, if we do not get that, we will continue to be seriously injured. Thank you very much.

Senator WALSH. Mr. Milnor.

STATEMENT OF N. F. MILNOR, LOS ANGELES, CALIF., REPRESENTING MILNOR, INC.

Senator WALSH. Your full name is N. F. Milnor and you reside in Los Angeles, Calif.?

Mr. MILNOR. Yes, sir.

Senator WALSH. Whom are you representing here?

Mr. MILNOR. Milnor, Inc.

Senator WALSH. What is your business?

Mr. MILNOR. We have stores in California, Hawaiian Islands, and Mexico.

Senator WALSH. What section would you like to discuss with the committee?

Mr. MILNOR. In reference to H. R. 8099 I object to section 31, page 38, line 19, that clause providing that an exemption of $100 will be authorized by the Secretary of the Treasury to any resident in the United States who has been out of the country for a period of not less than 48 hours.

May I say that after listening to the testimony here, anything that I might say I would like to offer as a suggestion, because there seems to be such a diversity of opinion as to working this out that

anything that I might have to say I offer as a suggestion, to be put in or thrown out, and not as a recommendation.

Senator WALSH. Very well.

Mr. MILNOR. My understanding of the original idea of the $100 exemption was that in the event any citizen of the United States was traveling in a foreign country and through accident, wear and tear, or any other reason, needed to add to his or her wardrobe or luggage, that citizen be allowed to spend a sum not to exceed $100 upon which he or she would not be required to pay a duty. Under the present law, or under the bill now pending, any returning resident can bring in any kind of merchandise free of duty up to an amount not exceeding $100, provided it was bought as an incident of the journey. This means that a person can go to Mexico or Canada and can purchase any or all kinds of household supplies and furnishings, including blankets, bedding, sheets, towels, dishes, cooking utensils, rugs, carpets, silverware, furnishings of all kinds, even building materials, or anything that might be termed merchandise.

Now, I might add to that that in our business in Mexico in one item—and I could diversify it by saying silverware, and all that sort of thing—one item such as blankets, it is not unusual for people having small hotels, bungalow courts, or rooming houses, or what not, to come down and buy 20 blankets at $4.25 apiece and come back in 30 days and replenish their entire place.

Now, let us assume under this pending bill that there is a family consisting of father, mother, son, and daughter; they can go to Mexico or Canada, make purchases up to $400 and provided they have been out of the United States for 48 hours, they are exempt from duty, and this can be repeated every 30 days. In other words, if they so desire they can make purchases during the year under the above conditions to the amount of $4,800, which should go a long way to furnish almost any home.

Now, I want Mr. Johnson to correct me if I am misinformed. At any rate, this is the custom at the border that I am acquainted with. Is it true, Mr. Johnson, that a party can cross into Mexico or into Canada and that he can select from a catalog a set of dishes costing $100; that he can get a bill of sale for that $100 set of dishes, and walk up to the collector of customs and say, "I have ordered these dishes and I would like to make the declaration at this time," and then the customs official stamps that declaration, and he in turn mails it back to the concern in Mexico or Canada, and in 1 month, 2 months, 3 months, or 6 months afterward, provided he has not been out of the United States 30 days, that set of dishes can be delivered across the border? Is that correct, Mr. Johnson?

Mr. JOHNSON. That is correct. Of course, a transaction of that kind would be subject to very close scrutiny, to determine if the purchase was only an incident to the foreign journey.

Mr. MILNOR. You say, "would be." Do you know whether it is?

Mr. JOHNSON. In my opinion, it is subject to close scrutiny.

Mr. MILNOR. If the man said, "I just simply went over there and I saw this set of dishes in the window, they did not have a full set but I ordered them under those conditions, I had a good idea of buying them when I saw them," would that be all right, Mr. Johnson?

Mr. JOHNSON. Goods are not required to accompany the travelers in order to be within the $100 exemption.

Senator CONNALLY. He could not bring a set of 100 dishes in his grip.

Mr. MILNOR. How is that?

Senator CONNALLY. Instead of lugging them over in his grip what is the harm in letting him ship them?

Mr. MILNOR. These are my ideas. I do not think they are any good, I will be frank with you, but I am telling you my personal opinion after years on the border, what I think is a solution of this problem.

Now, then, in reference to Senator Vandenberg's remarks, Mr. Boyd, secretary of the Retail Merchants Association of Detroit, submitted figures showing there were 28,091 exemptions claimed for the 9 days in the month of December. Now, you will note that these dates were December 5, which was the first Saturday in December, to December 12, which was the following Saturday, and the week of December 13 to 19, inclusive. In other words, the figures which have been submitted to you evidently were the peak of the year. This, as you are aware, takes three Saturdays preceding Christmas and the week preceding Christmas. According to the figures submitted you will note that out of this total of 28,091 exemptions there were exactly 706 people whose exemptions exceeded $25. You will notice also that of the 27,385 exemptions of under $25, the average was a trifle less than $5. Now, you understand, gentlemen, that under the present ruling this exemption of $5 can be claimed once each day, not merely once each 30 days.

Senator VANDENBERG. Provided the collector permits it. It is optional with the collector, the $5 exemption.

Mr. MILNOR. If you are not going to put it in then may I ask why it is part of the bill at all? You certainly cannot allow one collector of customs to allow it and another not to allow it.

Senator VANDENBERG. It happens, does it not?

Mr. JOHNSON. Yes, sir.

Mr. MILNOR. Do not misunderstand me, Senator. Your condition in Detroit is entirely different, I think than the condition in any other part of the country.

Senator VANDENBERG. No, no; it is the same in Buffalo, the same in Seattle, it is the same all across the Canadian border.

Mr. MILNOR. There are not nearly as many employees that cross into any of the other cities as there are from Mexico or from Canada that are employed, are there?

Senator VANDENBERG. I could not say that. I say it is a universal northern boundary problem.

Mr. MILNOR. Well, if the fact of the matter is to be left entirely to the discretion of the collector of customs as to whether they are allowed that amount or not, that is entirely different. According to Mr. Boyd's statement, one of the serious matters affecting the Detroit merchants was that of foodstuffs. Mr. Boyd, being asked the question by your chairman as to what was the saving by purchasing foodstuffs on the Canadian side, stated that the saving ran as high as 40 percent.

Mr. Boyd also stated that the present law enacted by Canada was to the effect that returning resident of Canada was allowed the privilege of bringing in merchandise up to $100 free of duty, provided he had been out of the country 48 hours, but he was only allowed

this privilege once every 4 months. If Canada allows its citizens to only make purchases in the United States and claim exemption every 4 months, why should the Treasury Department allow our citizens the same exemption but allow them to take advantage of it every 30 days?

Another statement made by Mr. Boyd to me personally was to the effect that there are approximately 10 Americans who cross the Canadian border for 1 Canadian that crosses our border.

Now, my objection is to the 30-day allowance. My contention is that no bona fide tourist—and that word has been used a great many times—would go out of the United States 12 times a year. It is true that there are concerns in the East who have buyers who go back and forth to Europe, but those are business trips, and I am at a loss to understand why they should be allowed an exemption for each and every one of their trips. I am very much opposed to the exemption being allowed every 30 days.

Now, as to the definition of "tourist," assuming that a citizen from the State of Massachusetts starts out on a motor trip or rail trip across the United States, he is gone 2 weeks or 3 weeks from his home, he comes to the Mexican border, there is no place on the Mexican border that has hotel accommodations now that Agua Caliente is closed, and he crosses into Mexico and returns within 48 hours, under the proposed ruling he is allowed no exemption; but, on the other hand, a tourist who takes a boat from New York on a "nowhere cruise," such as they have in the summer, he leaves Friday afternoon and gets back Sunday night, the boat has stores on it, it has touched at no shore, he has been out of the United States 48 hours and is entitled up to $100 exemption. The cruises that go from New York, that you are well acquainted with, leave on Friday afternoon or Friday evening, they go to Bermuda, they touch at Bermuda, as I understand, on Sunday morning and leave Sunday evening, or Saturday evening and leave Sunday morning, and return to the United States. It is true they are out of the United States 48 hours, but it is not true necessarily that they have spent more time on foreign soil than they would spend in Mexico or Canada. They can come in with a ship loaded, if the advertisements are true, up to 1,600 passengers on a boat, with a round-trip fare as low as $45.

Senator WALSH. Have you any suggested amendment?

Mr. MILNOR. My suggestion, Senator, is that the 48-hour provision be eliminated, or if a treaty or agreement, such as has been advocated with the contiguous countries could be in effect, I am heartily in accord with that. I think it is a wonderful suggestion, and if it could be worked out, I would be very much in favor of it.

Senator WALSH. If the 48-hour law was continued in the bill, would you eliminate the 30-day limitation?

Mr. MILNOR. I would raise it, absolutely.

Senator WALSH. To what?

Mr. MILNOR. As far as I am concerned, I would make it once a year, but Canada has it once every 4 months. I think that that would be more than fair and liberal.

Senator WALSH. Very well, thank you. Mr. Culbertson.

STATEMENT OF WILLIAM S. CULBERTSON, WASHINGTON, D. C., REPRESENTING THE MANUFACTURERS ASSOCIATION

Senator WALSH. Your full name is William S. Culbertson and your residence is Washington, D. C.?

Mr. CULBERTSON. Yes, sir. I am a member of the firm of Culbertson & LeRoy with offices in the Colorado Building.

Senator WALSH. You are representing the National Lumber Manufacturers Association?

Mr. CULBERTSON. Yes, sir.

Senator WALSH. We will hear you.

Mr. CULBERTSON. Mr. Chairman, the committee is already somewhat familiar with the subdivision with which I am going to deal, namely, (J) on page 4 of the Senate print of H. R. 8099. The time that I take will perhaps be determined by how much the committee wishes to hear on this subject. I should think possibly 15 or 20 minutes would cover it.

Senator WALSH. Do you propose any changes in the language of this bill?

Mr. CULBERTSON. My suggestions in behalf of the National Lumber Manufacturers Association are in line with those just made by Congressman Mott, namely, that this subsection (j) be stricken from the bill, and if that is not possible, in view of other interests which the Treasury may have in that subsection, we ask that there be added to the subsection these words:

> This provision shall not apply to lumber and timber products.

The section of the Tariff Act of 1930 which is involved is section 304, relating to the marking of imported articles.

Senator WALSH. I think we all understand, Mr. Culbertson, that the question of marking lumber now is discretionary with the Secretary of the Treasury, and he has seen fit not to issue any requirements or orders for the marking of lumber. Is that correct?

Mr. CULBERTSON. We take the position that it is not discretionary.

Senator WALSH. In other words, he has not complied with the present law, or he is not complying with the present law as you interpret it?

Mr. CULBERTSON. Yes. We are not dealing with motives here, we are simply dealing with the fact that here is a situation which the entire lumber industry in the United States is interested in. We have presented this matter fully to the Bureau of Customs, we presented testimony concerning the marking of lumber, and have made a petition that section 304 be applied in the case of lumber, but that has not, up to the present time, been done.

Section 304 refers to "every article," that "every article" listed in any way in the Tariff Act of 1930 shall be marked. The words "shall be" are used twice in the main part of the statute. We therefore contend that the obligation rests upon the officials of the Treasury Department to require the marking of lumber when imported into the United States, unless it falls within one of the three or four exceptions which are listed in the act, and we contend that lumber does not fall within any one of those exceptions.

The first exception is that an article may be exempted from marking if the marked article would be injured in the marking. We pre-

sented to the Bureau of Customs very extensive testimony upon that point. In the first place, it appears that about one-half of the lumber which is produced in the United States at the present time is marked. It is marked for the purpose of indicating the grade, or it is marked for the purpose of trade-marking. Merchants are interested in having their lumber identified in the markets, and they, therefore, have adopted trade-marks, and those trade-marks are placed upon each piece of lumber as it goes out into the American market.

I have brought with me the samples which we submitted to the Bureau of Customs as evidence upon this point, and I would like to ask the committee just to glance at these in order to see, as visual evidence, that it is practicable to mark lumber and that it is in accordance with the practice in the American industry.

(Mr. Culbertson handed some samples of wood bearing markings to the committee.)

Senator VANDENBERG. May I ask you, Mr. Culbertson, whether you know which one of these exemptions the Treasury presumes to rely upon for its refusal to order the marking?

Mr. CULBERTSON. That has not been stated in any of the testimony, so far as I know, and has not been stated to me personally. It may be that they would rely on the provision that it is a crude substance or material which might be exempted under one of the Treasury rulings for regulations, but our contention is that if such a regulation exists, it is not applicable under the statute to articles of lumber.

I think the question of Canadian competition in lumber has become a factor in this problem. I believe it is generally known that some objection has been made to the application of the marking statute to the importation of Canadian lumber. The objection has come from certain importers, and we understand also from certain producers across the border. Therefore, it seems to me relevant to inquire what the practice has been among the Canadians.

The Canadians employ marking in much the same way that the American lumber industry does. There is an organization known as the Associated Timber Exporters, Ltd., a group of Canadian producers who merchandise lumber in foreign markets. They have adopted a trade-mark which is called "Astexo Canada," and I have here, which is placed on file with the committee, a circular which shows this trade-mark, "Astexo Canada." The circular says, "Douglas Fir, Western Hemlock, B. C. Red Cedar." It uses the same argument that the American producers used with reference to the desirability of marking lumber; this circular says this trade-mark "is your protection and guarantee of receiving lumber manufactured by the sawmills in British Columbia." That mark goes on Canadian lumber as it goes out into the world markets, except to the United States.

Again I am not dealing in motives, but for some reason, within the last few years, lumber coming from Canada into the United States has not been marked in line with the general practice of marking Canadian lumber going into foreign and empire markets.

Senator VANDENBERG. Is there anything in the Canadian reciprocal treaty which might cover an exception of this character?

Mr. CULBERTSON. In our opinion there is not, Senator. I have heard some question raised as to whether or not the marking of lumber might be "a trade barrier." On that point, if it is raised,

we would reply in this way, that any requirement of customs regulations would be in the nature of a barrier to trade. The requirement to make out an entry, the requirement to submit certain documents with reference to the imported article—such are, in a sense, restrictions upon trade. But we contend that the marking of an article is not a trade barrier within the meaning of the Trade Agreements Act of 1934. I do not believe that the legal counsel for the Customs Bureau would contend that marking is a trade barrier within the meaning of the Tariff Act of 1934.

The Canadians have recognized also the value of having every piece of lumber marked. I have here a circular from the White Pine Bureau, 38 King Street West, Toronto, which sets forth the mark which appears upon the lumber merchandised through that bureau, and in the circular it states this (circular on file with committee):

> To insure getting genuine "Pinus Strobus" insist that the trade-mark be stamped on EVERY PIECE.

I have also a circular here (placed on file with the committee) from one of the American concerns, the Brooks-Scanlon Co., which shows in a visual way the marking of the lumber in the South and in the West of the United States.

So that any suggestion that lumber cannot be marked without injury to the lumber is erroneous.

Some point has been made as to the cost of marking lumber. Full testimony was submitted upon that point at the hearings before the Bureau of Customs, and the evidence is available to the committee if it wishes to see it.

Senator WALSH. Did the Bureau help to render the decision?

Mr. CULBERTSON. No, Senator. The matter is still under investigation.

Senator WALSH. When were these hearings held?

Mr. CULBERTSON. The first information was submitted last April, and the industry has been insisting on and hoping that some decision would be reached, that lumber would be marked as we believe it should be under the statute.

I shall not deal in detail with the cost of marking lumber, for I realize that the time of the committee does not permit that.

Senator WALSH. But the record that was presented shows that?

Mr. CULBERTSON. The record shows that conclusively, and it is in no way denied by the importers or any of those who appeared that it is possible to mark lumber at a very nominal cost with reference to the total value of the product.

Now just a word with reference to the result of the failure of the Treasury to require the marking of imported lumber. As I say, we have presented this case fully to the Bureau of Customs and have received no decision up to the present time.

One of the factors which has made this problem particularly urgent, from the standpoint of the domestic industry, is the Domestic Origins Act. The Congress of the United States enacted a law providing that domestic articles should be used under specifications for all work by the Government. That Domestic Origins Act was passed by Congress in 1933 and provides that:

> Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be

inconsistent with the public interest, or the cost to be unreasonable, only such manufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use.

The requirements of this law are included in the specifications of the very same department that is declining at the present time to apply this section 304 to lumber.

Its requirements are also applied in connection with the W. P. A. contracts, and all contracts of the subdivisions of the Government which are asking for bids on public works. To show the committee concretely how this works I have before me a letter from the files of the West Coast Lumbermen's Association. It is departmental correspondence within the organization, and I will ask that it be included in the record. It reads:

The difficulty of identifying lumber of foreign origin to the extent of absolute proof was again demonstrated at the Culver City, Calif., elementary school under construction, W. P. A. project No. 2696.

Included in a truck load of 2 by 6 by 16 Douglas fir was one piece having the word "Canada" branded upon it. Other pieces in the shipment contained crayon marks identical with crayon marks on the piece stamped "Canada." The logical inference would be that every piece showing the similar crayon symbol was imported lumber.

While the W. P. A. inspector, Mr. Bickenbach of the Los Angeles W. P. A. office, would not permit the use of this one branded piece, the others, obviously of the same origin, were allowed to enter into the construction work for the reason of vendors having made previous certification of domestic origin.

In the dealer's yard imported lumber is generally piled together with the same species of domestic lumber and delivered mixed by him to the consumer. The lack of markings on imported lumber would lead the vendor to believe his certification of domestic origin is made in good faith.

The general practice is that lumber is imported from Canada and is purchased by retail dealers or put in wholesale yards. It is mingled there with lumber of domestic origin and it is then sent out to fill these contracts, and when the Government inspectors come to the question as to whether or not a given piece of lumber is or is not of domestic origin they are very much confused by the lack of the practice of marking the foreign lumber. That is the situation then with which the industry is confronted.

Senator WALSH. Mr. Culbertson, is not some of the lumber that is imported from Canada removed from competition with domestic lumber?

Mr. CULBERTSON. Removed from competition?

Senator WALSH. Removed from competition. Some lumber is imported from Canada that is not in competition with domestic lumber, is that not so?

Mr. CULBERTSON. There are certain types, as I understand it, Senator, of which that is true.

Senator WALSH. What percentage would that amount to?

Mr. CULBERTSON. There are certain types of which we have a deficiency in this country.

Senator WALSH. What percentage would you say?

Mr. CULBERTSON. About 20 or 25 percent, I should say, would be the correct percentage.

Senator WALSH. And 75 percent is in competition with domestic lumber?

Mr. CULBERTSON. Seventy-five percent is in competition with domestic lumber, and very severe competition, and we believe on account of the lack of marking very unfair competition with the American product.

The industry feels that, since other industries are receiving protection under section 304, lumber is entitled to this protection, and it can have it by the simple order from the Secretary of the Treasury that lumber, as it enters the United States, shall be marked as other articles are marked.

Senator VANDENBERG. Do you know when the first protest, or request was made to the Treasury Department to have Canadian lumber marked in accordance with the 1930 law?

Mr. CULBERTSON. Sometime in 1936, Senator.

Senator VANDENBERG. And you mean to say that you have never had an answer?

Mr. CULBERTSON. There has been no decision upon that point at all by the Bureau of Customs.

Senator VANDENBERG. And you have no information as to what the Treasury relies upon to justify its position?

Mr. CULBERTSON. I have none at all. I think perhaps the reason is indicated by the amendment which is put into this bill, namely, that the practice has gone on of not marking lumber for some reason, call it carelessness, if you like, or oversight, or whatever it is.

Senator WALSH. You interpret this new proposal as indicating a state of mind on the part of the Bureau that they do not think lumber ought to be marked, is that not right?

Mr. CULBERTSON. I am not sure that that conclusion should be drawn, but it is a recognition of the fact that it has not been marked and that something has to be done about it, and we have asked them to do something about it, and they have answered not by remedying the situation by what seems to us to be the simple way to do it, but by introducing into the proposed bill a provision which will not help the situation, but which will aggravate it.

Senator VANDENBERG. In other words, which will invalidate their lapse.

Mr. CULBERTSON. Which will invalidate the lapse of action by the Treasury. We feel that the industry has a right to have the competing products marked when they come into the United States.

Mr. Mott mentioned what happened in the House. In the House objection was made on the floor to subdivision (j) because, although lumber is not mentioned, it seems fairly obvious that it applies primarily to lumber and because the evidence that we have submitted is so overwhelming as to justify the conclusion that subdivision (j) should be eliminated from the bill.

Senator WALSH. Anything else?

Mr. CULBERTSON. Senator, may I ask that a letter which was addressed by Dr. Compton, who is the head of the National Lumber Manufacturers Association, to Senator Harrison be included at this point in the record? It summarizes the statements which I have made.

Senator WALSH. That may be inserted in the record.

Mr. CULBERTSON. And I would like also to say that Mr. Henry Bahr, of the National Lumber Manufacturers Association, appeared

before the Ways and Means Committee on the same subject and his testimony appears beginning on page 164 of the hearing before the Ways and Means Committee on the customs administrative bill.

(The letter referred to is as follows:)

NATIONAL LUMBER MANUFACTURERS ASSOCIATION.

Hon. PAT HARRISON,
Chairman, Senate Finance Committee,
Washington, D. C.

DEAR SENATOR: More than a year ago we requested that the Treasury Department enforce section 304 of the Tariff Act of 1930. This section requires that imported lumber (just as any other articles) be so marked as to identify the country of origin. The statute is mandatory. Lumber has not been, and reasonably it cannot be, excepted under its terms. Yet the Treasury Department is continuing to permit lumber to be entered without the required identification of its foreign origin.

The Department has not made final answer to our request. But it recently submitted to Congress the draft of a bill to amend several administrative provisions of the Tariff Act of 1930, including a revision of section 304. This draft bill, introduced originally as H. R. 6738, was reintroduced and favorably reported by the Ways and Means Committee after minor amendments as H. R. 8099.

The proposed revision of section 304 contains a provision (proposed paragraph (j) which would permit the Secretary of the Treasury to except from the requirement of marking any article if it has been entered in substantial quantities in the past 5 years without marking. Although lumber is not mentioned by name, this provision would undoubtedly apply to it. Probably it would equally apply to no other important commodity.

No justification or excuse has been stated by the Treasury for this unusual proposal. On its face the only purpose is to legalize the present nonenforcement of the law. The present law contains four reasonable grounds for exceptions for marking; five other reasonable new exceptions are proposed. Under none of these nine exceptions is lumber excepted. So it is proposed to permit the Treasury to arbitrarily except lumber for no other reason than that the Treasury in the past has not required its marking when imported, although the language of the law itself is mandatory in requiring that it be marked.

The bill, H. R. 8099, proposing this exception, is now on the House calendar. It has been announced that the Treasury is pressing for its enactment. If the bill is passed by the House and referred to your committee, we ask that you give us an opportunity briefly to explain this proposed new marking provision and to ask its removal.

We do not believe that you or your committee will approve of a provision in effect, that if the Customs Bureau for a period as long as 5 years, succeeds in avoiding the enforcement of a clear-cut act of Congress, that act of Congress shall thereafter not apply.

The offending provision of H. R. 8099 is attached.

Yours sincerely,

WILSON COMPTON.

Following is the provision in section 3 of the proposed "Customs Administrative Act of 1937" which, if enacted, would except lumber from the country of origin marking requirements:

SEC. 304 (a) * * * The Secretary of the Treasury may by regulations * * *

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

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within 2 years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin.

Senator WALSH. Mr. Craig.

STATEMENT OF DAVID R. CRAIG, WASHINGTON, D. C., PRESIDENT, AMERICAN RETAIL FEDERATION

Senator WALSH. Your full name?

Mr. CRAIG. My name is David R. Craig. I am president of the American Retail Federation.

Senator WALSH. How large an organization is that?

Mr. CRAIG. Our organization consists of State and national associations of retail merchants. At the present time the membership includes 21 State associations of retailers and seven national retail trade associations. The State associations are as follows:

California, Colorado, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, and Virginia.

The membership at present comprises approximately 150,000 retail stores.

I shall confine my remarks to the 48-hour provision of section 31 of H. R. 8099, which you are now considering. This section amends the present law covering tourists' exemptions. The amendment has the unanimous support of all the State and National associations of retailers affiliated with us, and they authorize us to confirm the request made to you yesterday, on behalf of a number of other retail organizations by Mr. Charles E. Boyd, of Detroit.

The situation which this amendment proposes to remedy is brought about by the fact that the present law does not specify closely enough what it means when it refers to tourists. As a result it happens that many persons go across the border either to Canada or Mexico for the specific purpose of buying merchandise, and when they are confronted by customs inspectors on their way back, possibly an hour or two later, they describe themselves as bona fide tourists who have made purchases incident to their journey. Such a description, though made with a perfectly straight face, is often more than even the most gullible customs inspector can believe.

Ordinary courtesy forbids the customs inspector to call the returning resident a liar unless he has some way of proving it. This amendment gives the customs inspector some evidence. It gives him at least one way of telling the difference between a tourist and a smuggler, between a traveler who is really entitled to an exemption and one who is not. The present law puts the burden of proof on the inspector. Actually it belongs on the tourist.

Border residents have taken advantage of the vagueness of the present law and have gone into this line of customs-evading business on a large scale. Mr. Boyd yesterday told you that the amount involved, for Detroit alone, can be put at something like $5,000,000 a year. The case is particularly bad in Detroit, in Buffalo, in southern California and in northern Washington. In southern California the fact that Tijuana is a free port aggravates the situation even more, because goods can be bought there with no duty or tax in their price, sometimes even without duties or taxes in the countries of their origin.

To show you how the California retailers feel about it, we should like to read a resolution unanimously adopted by the California Retailers Association on April 13, 1937:

Whereas residents of the United States are bringing into California duty free large quantities of goods of European manufacture; and

Whereas such importations are detrimental to the interests of the American manufacturers, American labor, and American merchants, as well as to the Federal revenues; and

Whereas a similar condition exists at all ports of entry on the Mexican and Canadian borders; and

Whereas such detrimental entry of goods free of duty is under the provision of paragraph 1798 of title II of the revenue act which grants an exemption on articles to the value of $100 under certain conditions to residents of the United States returning from abroad but without any requirements as to duration of absence from the United States of the person claiming such exemption: Therefore, be it

Resolved, That the California Retailers Association, by vote of its trustees at this meeting, go on record in favor of the limitation of such free entry of goods into the United States by an amendment of paragraph 1798 of title II of the Tariff Act of 1930 by a provision that such exemption may not be claimed by a resident returning to the United States after an absence of less than 3 days; and be it further

Resolved, That the secretary of this association be instructed to request our Representatives in Congress, and the National Retail Dry Goods Association, the American Retail Federation, the National Association of Manufacturers, etc., to advocate the adoption by Congress of such amendment.

The type of merchandise brought in under the protection of the vagueness in the present law is the type that ordinarily would be subject to a high rate of duty such as perfumes, furs, pottery, tableware, cameras, and blankets. The losers are therefore not only United States retailers, United States manufacturers, and United States labor, who must compete with foreign stores and foreign factories and foreign labor, but also the United States Government, which suffers a considerable loss of revenue.

Section 31 of the bill before you is already familiar to you. It says in effect that unless a resident remains outside of the country not less than 48 hours the assumption must be that he is not a bona fide tourist who made incidental purchases and is entitled to the exemption, but, instead, is a customs evader who went across the line with the deliberate intention of making purchases and bringing them back through the fog in the law. Without this amendment customs officials must go on giving citizens the benefit of the doubt. With the amendment the customs inspector has something to go on in enforcing the intent not only of this law but also of the old one.

Customs officials representing the United States Treasury have asked for this 48-hour provision in appearances not only before this committee but also before the House committee which considered the bill last May. Individual retailers have appeared before the committee asking the same amendment. Our federation, with all the member associations I have named to you, confirms these requests and asks you to approve section 31.

Senator WALSH. Mr. Besse.

STATEMENT OF ARTHUR BESSE, NEW YORK CITY, REPRESENTING THE NATIONAL ASSOCIATION OF WOOL MANUFACTURERS

Senator WALSH. Your full name?

Mr. BESSE. Arthur Besse. National Association of Wool Manufacturers.

I want to speak very briefly about section 29. The statement of the Treasury Department and also the report of the House Ways and Means Committee, No. 1429, very clearly explains the purpose of that section. If the section is enacted, it will enable the Bureau of Customs to administer paragraph 1111 relating to blankets and similar articles as that paragraph was administered under the Tariff Act of 1922 and for the first 5 years of the Tariff Act of 1930.

Senator WALSH. Are there some witnesses in opposition to this?

Mr. BESSE. I think the only witness appeared yesterday, Mr. Chairman.

Senator WALSH. He appeared yesterday?

Mr. BESSE. I think so. The Tariff Act of 1930 was administered exactly like the act of 1922 for the first 5 years, until a decision of the Court of Customs and Patent Appeals, based, we believe, on an incorrect knowledge of the facts, reversed the procedure. If this section is passed, it will make it possible to administer the section as Congress intended and as the manufacturers of blankets expected.

Until the opposition to this section was expressed yesterday by a witness we felt it would be unnecessary to take your time to explain it, but in view of the comments that he made I think we will have to briefly review the effect of the decision of the court and the purpose of this section 29.

It is not, I think, to be presumed that the Congress did a vain and inglorious thing in including steamer rugs in paragraph 1111, but the effect of the decision referred to is to take out of that paragraph steamer rugs with fringe, which are practically the only kind of steamer rugs imported, and put such steamer rugs into paragraph 1120.

You, of course, are very familiar with the tariff act, as indicated by your statements on the floor when the act was being discussed in 1929, and it is unnecessary to remind you that even those who opposed the imposition of a duty on raw wool were insistent that if that duty was imposed there should be a compensatory duty on wool entering in the form of piece goods, otherwise, of course, wool which was subject to duty in the raw state would enter free of duty if it entered in the form of manufactures of wool.

Mr. Bevans yesterday mentioned certain equivalent ad valorem rates obtained by adding together the specific rate and the ad valorem rate and dividing by the foreign value, claiming those rates were excessive, presumably to suggest that the rates should be reduced by continuing an obviously incorrect assumption that Congress did not intend to provide for steamer rugs with fringe at all, but merely for those rare instances where such rugs without fringe may be imported.

The question here, however, is not one of rates but one of classification. Congress obviously intended steamer rugs to be assessed

under paragraph 1111, but since the Customs Court has held that the phrase "of blanketing" means that the blanketing must have a separate existence as such before something is made of it, and has further held, on incomplete evidence, that the fabric of which steamer rugs with fringe are made did not have such a previous existence, the obvious remedy is to delete the words "of blanketing." This will correct the present difficulty and will allow the Bureau of the Customs to revert to the administrative practice hitherto prevailing.

The Summary of Tariff Information prepared by the Tariff Commission details the purpose of including the phrase "of blanketing." The report states that a change in the blanket paragraph was necessary for the purpose of including in that paragraph fancy blankets, robes, and rugs "when similar to blankets in construction and method of manufacture" rather than including them under a paragraph covering woven fabrics which prescribed a higher rate of duty.

When enacted paragraph 1111 included the phrase "made of of blanketing." This phrase the Court of Customs and Patent Appeals has interpreted otherwise than was intended. Congress obviously had no intention of differentiating between steamer rugs with fringe and without fringe. If they had they would have so stated. But the decision of the court now makes that distinction, assessing rugs with fringe under paragraph 1120, with no duty on the wool content, and assessing steamer rugs without fringe which are, in every essential particular, the same article, under paragraph 1111.

We are not at all disturbed over the suggestion made by the witness yesterday that this paragraph would permit the possible classification of rugs and robes that might be of pile fabrics or knit fabrics under this paragraph, because those articles would not be steamer rugs and they could not be utilized for the purposes for which they are generally used, because in paragraph 1111 there is a clause which limits the importations to fabrics 9 feet in length or under.

I believe that the proposed amendment, section 29 of this bill, will correct a very great injustice and will effectuate the original intention of the Congress.

I will take no more of your time, except to say that I understand that the wool felt hat manufacturers have a similar problem in connection with paragraph 1115 (b), where the Customs Court has ruled, as I understand it, that the felt had no previous existence as such and consequently, I believe, Senator Guffey has suggested an amendment to remove from that paragraph the word "felt," just as we wish to remove from paragraph 1111 the words "of blanketing," as provided in this section 29.

Senator WALSH. We will adjourn until a quarter past 2.

(Whereupon, at the hour of 12:10 p. m., a recess was taken until 2:15 p. m. of the same day.)

AFTERNOON SESSION

The committee reconvened at 2:15 p. m., at the expiration of the recess.

Senator WALSH. The committee will come to order. Mr. Ely.

STATEMENT OF NORTHCUTT ELY, WASHINGTON, D. C.

Senator WALSH. Your full name?

Mr. ELY. Northcutt Ely. I appear here for Mr. Wirt G. Bowman, the chairman of the First National Bank of Nogales, Ariz.

Senator WALSH. You are a resident and a lawyer in the city of Washington?

Mr. ELY. Yes, Senator. Mr. Bowman is also interested on the Mexican side of the line, as Mr. Milnor is. However, I am presenting some views on this 48-hour limitation, with particular reference to the effect upon the towns on the American side of the line. Before I conclude I will submit a form of amendment dealing with the matter; you asked this morning if specific amendments have been prepared, and one has been prepared upon which the Arizona people and Texas people are in accord; I hope it meets with the Michigan situation also.

The $100 exemption was designed, I take it, as a convenience for bona fide tourists. The abuses which are complained of in regard to it are in several categories:

First. That it is being made to apply to a type of goods which a bona fide tourist does not buy, but which are bought over the line by people who go there for that purpose.

Second. That a bona fide tourist is not likely to go out of the country once every 30 days and does not need that frequent an exemption.

Third. That there is no helpful definition in the law now as to what is a bona fide tourist.

This bill does not attempt to reach the first two of such complaints. That is, it does not limit the type of goods which may be brought in, nor does it limit the frequency with which the exemption may be claimed. It does seek to set up a standard which will aid administratively in determining whether the tourist is a bona fide tourist or whether he went abroad, across the line into a contiguous foreign country, to buy goods there.

The 48-hour provision may be workable applied to the Canadian border alone. As applied to the Mexican border it works a discrimination in several respects. In the first place, the Mexican towns across the line from ours are not gateways to Mexico, with the single exception perhaps of Laredo, which is a gateway on the highway to Mexico City. The tourists who cross the border into Mexico (with the exception of tourists crossing at Laredo, bound for the interior) are, by and large, east and west bound, American tourists going from one American locality to another. That is, they are going from the east coast to California, or intermediate points, and they stop off or detour at El Paso or Nogales, or other border towns for the purpose of seeing the sights in Mexico, buying the curios, and in part, no doubt, attracted by the ability to purchase foreign goods there as an incident to their trip, just as a man going to Bermuda might do. There is no occasion for anybody to stay on the Mexican side 48 hours unless he goes there specifically to buy goods and to take advantage of this new form of exemption; he either goes deep into the interior, which requires many days, or he stays a few hours in the border towns.

The writing in of the 48-hour proviso is simply going to have the effect of depriving the bona fide small tourist, the automobile trav-

eler, of the opportunity of the exemption at all, while leaving it wide open to two classes of people; one is the man who can afford the deeper interior trip to Mexico City and is, in that respect, like a tourist to Europe, and the other is a man who can afford to stay over the line 48 hours at some resort. It leaves wide open the door to a professional border crosser, who can cross once in 30 days, as he did before, stay 48 hours, and claim the exemption.

There is no test as to the character of the goods, or anything of that sort, and, as explained earlier, he may even have the goods sent to him after he has returned. They do not have to come with him.

The resolution seeks to give to the enforcement of the law a degree of flexibility which will permit the Canadian policy, established by their law, to be copied and enforced by our Government along the Canadian border, without requiring the solution designed for that situation to be ironclad in its application to the Mexican border.

A tourist, I presume, crossing at Detroit or some other border city, bound into Canada, is bound north. It is a gateway he goes through. If he stays less than 48 hours, perhaps it is a fair presumption that he did not go through as a tourist, but that presumption is wholly inapplicable to the southern border.

What we want is an amendment which will delete the inflexible provision in this bill that limits the $100 exemption to a man who has been out of the country 48 hours, and substitute the authority for the Treasury Department, when it finds that a limitation is imposed as to time by a contiguous foreign country upon purchases made in the United States, to enforce a like limitation as to the exemption upon articles purchased in that country.

The Canadians have adopted that policy; they have imposed a 48-hour restriction upon the exemption allowed upon purchases made here, and in addition they have gone further; they have restricted the frequency of the exercise of the exemption to once each 4 months instead of once each month.

The bill as drawn does not attempt to reach the strictness of the Canadian position by changing our 1-month proviso to 4 months. and consequently in our proposed amendment we have not endeavored to do that; we have dealt solely with the 48-hour provision.

I do not think there can be any question of complications with Canada, since we are permitting to be applied as against Canada a policy which Canada has initiated, and we are not attempting to go as far in enforcing that policy as they have, since we do not change the frequency provision. If you please, I will read the specific language.

Senator WALSH. Is there any Mexican law on this subject?

Mr. ELY. I am told that there is no Mexican law at present allowing an exemption. Actually, I am informed the collectors of the Mexican border towns exercise some discretion, and chambers of commerce along the border are negotiating with the Mexican bodies for a reciprocal arrangement.

I will read this for the record.

On page 39, lines 9, 10, and 11, strike out the following:

who has remained beyond the territorial limits of the United States for a period of not less than 48 hours and—

On page 39, line 13, insert after the colon the following:

Provided further, That if the Secretary of the Treasury finds that an exemption allowed by a contiguous foreign country upon articles purchased in the United States is restricted to a returning resident who has remained beyond the territorial limits of such country for a specified minimum period of time, the said Secretary, by regulations to be prescribed by him, may restrict the exemption authorized by this section as to articles purchased in such country to a returning resident of the United States who has remained beyond the territorial limits of the United States for a like minimum period of time, not greater than 48 hours.

Senator VANDENBERG. Have you any objection to making it read, "shall restrict," instead of "may restrict"?

Mr. ELY. I have no objection. This amendment has been drafted in collaboration with Senator Hayden's office.

Senator WALSH. Is this amendment acceptable to the representatives from the State of Texas?

Mr. SIMONS. Yes, sir; that is satisfactory to us.

Mr. KAZEN. That is satisfactory to us, except this, that it does not go far enough. That, as far as it goes, is satisfactory to the representatives from Texas.

Mr. ELY. For the purpose of the record, I have here from Senator Hayden's office a letter which he had received from the Nogales Chamber of Commerce, enclosing a resolution, that I would like to have incorporated in the record. Like expressions have been received from the chambers of commerce at Douglas and Tucson.

Senator WALSH. That may be done.

(The letter referred to is as follows:)

THE NOGALES CHAMBER OF COMMERCE,
Nogales, Ariz., May 25, 1937.

The Honorable United States Senator CARL HAYDEN,
Washington, D. C.

DEAR SIR: The enclosed resolution speaks for itself and represents the efforts of the Nogales Chamber of Commerce to combat and defeat proposed national legislation as contained in H. R. 6738.

We shall be most pleased to have your cooperation in this regard.

Thanking you in advance for your consideration and efforts, we are

Yours most truly,

H. P. WATKINS, *Secretary.*

RESOLUTIONS

Whereas the tourist trade along the southern border of the United States has become the chief industry to that section; and

Whereas the ease with which short trips are made abroad and purchases made incident to these trips have been the major factors in developing this trade; and

Whereas this lack of red tape has helped to build reciprocal trade between Mexico and the United States; and

Whereas any legislation looking to increasing Government red tape and making any transaction made in Mexico more difficult to reconcile with United States Customs Service would result in serious losses in foreign exchange of trade; and

Whereas proposed legislation contained in H. R. 6738 does seek to increase red tape and add burdens to those inclined to make short trips to Mexico: Be it therefore

Resolved, That our congressional Delegates, the Honorable Henry F. Ashurst and Carl Hayden, Senators, and John F. Murdock, Congressman, be, and are, herewith petitioned to use their influence to defeat H. R. 6738 for the reasons:

1. The majority of the purchases made by tourists in Mexico offer no competition to United States merchants. The purchases are made because the tourists are in Mexico and desire to have souvenirs of their trip abroad.

2. The clause in H. R. 6738 providing for a 48-hour stay in foreign territory will add to the burdens of the tourist trade so as to remove one of the chief border attractions.

3. The proposed legislation is certainly vicious, unfair, and unjust in that it contains the very essence of class legislation in that it would seriously cripple the border communities whose businesses have been developed on tourist trade and that it denies these tourists the privilege of making purchases in foreign countries incident to a short trip, and that the increased revenue to the United States Treasury, if any, derived from this proposed regulation will in no wise compensate the border towns for their losses in tourist revenue.

4. It is obvious that the regulations governing traffic with foreign countries is becoming more difficult, and each regulation or law passed has added to the burdens of the border countries; be it further

Resolved, That copies of these resolutions be forwarded to the honorable Senators and Congressman, Henry F. Ashurst, Carl Hayden, and John R. Murdock.

Copies to be sent to chambers of commerce at San Ysidro, Calif.; Tucson, Phoenix, Yuma, Bisbee, and Douglas, Ariz.; El Paso, Del Rio, Eagle Pass, Laredo, and Brownsville, Tex.; Buffalo, N. Y.; and Detroit, Mich., asking their cooperation in defeating this measure and that a copy become a part of the minutes of this meeting.

Passed by the Nogales Chamber of Commerce, Nogales, Ariz., May 21, 1937.

(Signed) JACK LEE, *President*.

Attest:

H. P. WATKINS, *Secretary*.

Senator WALSH. Mr. Farley.

STATEMENT OF J. W. FARLEY, NEEDHAM, MASS., CHAIRMAN OF THE BOARD, MERRIMAC HAT CORPORATION

Senator WALSH. Your name is J. W. Farley?

Mr. FARLEY. Yes, sir.

Senator WALSH. Your residence?

Mr. FARLEY. Needham, Mass.

Senator WALSH. You are an officer of the Merrimac Hat Corporation?

Mr. FARLEY. I am chairman of the board.

Senator WALSH. What manufacturing plants have they?

Mr. FARLEY. We have one at Amesbury, Mass., and a subsidiary at Upton, Mass., and a partial subsidiary in Beacon, N. Y. I also represent all the other manufacturers of wool and felt hat bodies, which are: Mohn Bros. Co., Reading, Pa.; F. & M. Hat Co., Denver, Pa.; Geo. W. Bollman & Co., Adamstown, Pa.; Adamstown Hat Co., Adamstown, Pa.; Beebe Manufacturing Corporation, Beacon, N. Y.; Neuman Endler Co., Danbury, Conn.; Merrimac Hat Corporation, Amesbury, Mass.; Dutchess Hat Works, Inc., Beacon, N. Y.; Wagner Hat Co., Haverhill, Mass.; Wm. Knowlton Sons Co., Upton, Mass.; Edwin D. Pickert, Milford, Mass.

Also, while not specifically representing these others, I am appearing for them and they will later endorse what I say, I believe, and they are: United Hatters (union), Millinery Stabilization Committee, Wool Merchants, Evans & Levering (wool scourers), Wool Growers Association.

We appear in this matter in favor of an amendment to H. R. 8099, which we suggest be inserted immediately subsequent to the one referring to blankets about which you have heard this morning. Our situation as to the wool felt hat and wool felt hat bodies is substantially the same as that.

Under section 1115 (b) it was intended, we believe, to include the articles in question.

Senator WALSH. Will you read that section? It is a short one.

Mr. FARLEY. As enacted, it states as follows:

> Bodies, hoods, forms, and shapes for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; and in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), 25 cents per article.

Now, that was later changed as to the rate.

Senator WALSH. By Presidential order?

Mr. FARLEY. Yes, sir; the ad valorem was dropped to 55 percent; and the duty on the separate articles, finished hats, to 12½ instead of 25.

Senator WALSH. When was that done?

Mr. FARLEY. The President's proclamation is dated March 16, 1931. Since the act was passed, every dealing with these articles by the Treasury Department, by the customs, and by all concerned, was on the assumption that it meant that these articles made out of wool are governed by that section. It is clear that that is what they related to. The importers have questioned it, and by decision which has come down since this was before the House, this bill, they decided that because of a technical rule——

Senator WALSH (interposing). Since last August?

Mr. FARLEY. Yes, sir; that although these bodies were felt or felt wool, they were not within the specific terms of that section, because the wool felt did not exist independently before manufacture.

Senator WALSH. Were the lower rates fixed by Presidential order?

Mr. FARLEY. Yes. The court ruling threw them into 1115 (a), and under that the specific duty becomes 33 cents per pound and the ad valorem 45 per cent. So that in both places the duty is dropped by 7 cents specifically and by 10 percent on the ad valorem. Now, we claim and maintain, sir, that that is exactly what Congress did not intend.

Senator WALSH. When was that decision?

Mr. FARLEY. That came down in November, the decision from the Customs Court of Appeals. The prior decision, which was of the lower court, was in favor of our contention that it mean wool felt hat bodies.

Senator WALSH. Has there been any increase in imports since that time?

Mr. FARLEY. It is difficult to say, sir. I could answer "yes," as there is apt to be a seasonal increase any way. We maintain, whether it would be provable beyond doubt or not, there was a very great increase. It was partly explainable by seasonable matter, looking toward the next seasoon.

The intention of the Congress we think is perfectly clear from the record, and I would point out that even the court, in the concurring opinion of the court, held—and this Judge Brand:

> After studying carefully the legislative history I do not have the slightest doubt that when Congress framed subdivision (b) of paragraph 1115 it intended to include therein the particular kind of merchandise involved.

Now we rest substantially on that. It is perhaps appropriate for a moment to discuss the decision. We feel it was erroneous, but it is nonetheless the decision, but whether erroneous or not it has effect. Now the effect is incalculably disastrous to the industry. There are

ample figures there in the possession of the customs department, of course, showing that even under the prior rate, the one established by Congress, as reduced by the Presidential proclamation, there is a flood of imports.

Senator WALSH. Where do these come from?

Mr. FARLEY. It was formerly Italy that was the chief country, but the Japanese started, and the wave of their imports has been growing tremendously, so that now they have become, in this last year, the country of chief import, and every time you take your eye off the figures they are multiplied exceedingly, and under this we have every reason to believe and every apprehension that they will swell still more.

Now, even prior to this, as I say, it was a difficult struggle.

Senator WALSH. Prior to Presidential order?

Mr. FARLEY. After the Presidential order, and particularly prior to this court decision. With this lowered rate it has practically doomed that industry. We cannot compete, paying the rate that we do, with Japanese labor, but I very distinctly want to make clear that we are not now trying to get into any tariff discussion. We merely ask that the rate intended by Congress, admittedly intended by Congress, as modified by the President's proclamation be restored, but I can assure you that it is absolutely vital to this industry. Unless that is done the hand of the Jap closes right on our throats and we will inevitably choke. We hope that we can have Congress' intention clarified, and, if possible, as promptly as feasible, because it is a desperate situation.

Senator WALSH. Have you seen the report that the Treasury Department has made on this subject?

Mr. FARLEY. Yes, sir.

Senator WALSH. Is the proposed amendment by them satisfactory to you?

Mr. FARLEY. Entirely.

Senator WALSH. Very well.

Mr. FARLEY. I will be very glad to answer any questions that I can. We have prepared a very brief statement. May I have that presented to the stenographer and included in my testimony?

Senator WALSH. You may, Mr. Farley.

Mr. FARLEY. It is, in substance, what I stated.

(The brief referred to is as follows:)

CRITICAL CONDITION OF THE WOOL FELT HAT PRODUCERS AND RELATED INDUSTRIES DUE TO NULLIFICATION OF PARAGRAPH 1115 (b) OF ACT OF 1930

NULLIFICATION OF PARAGRAPH 1115 (B) OF ACT OF 1930 BY TECHNICAL CONSTRUCTION CONTRARY TO INTENT OF CONGRESS

Origin of paragraph 1115 (b).—Under the Tariff Act of 1922 wool-felt hat bodies were classified in paragraph 1115 as articles of wearing apparel in chief value of wool.

In the Tariff Act of 1930 Congress recognized the necessity of providing a special paragraph to cover the rapidly increasing imports of wool-felt bodies and enacted 1115 (b) as follows:

Paragraph 1115 (b). "Bodies, hoods, forms, and shapes for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75[1] per centum ad valorem; and in addition thereto, on

[1] 75 to 55 percent ad valorem.

all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), 25[2] cents per article."

Rates changed by Presidential proclamation dated March 16, 1931 (T. D. 44715).

It will be noted that the above paragraph includes the phrase "manufactured wholly or in part of wool felt," which was intended to qualify the words "hats, bonnets, caps, berets, and similar articles," but which could be construed to qualify the words "bodies, hoods, forms, and shapes."

Nullification of paragraph 1115 (b).—Under the act of 1930 over 110,000,000 wool-felt bodies have been imported and these have all been classified under paragraph 1115 (b) by the Treasury Department. However, this action has been protested and tried in the case of *Cohn and Lewis* v. *United States*. The importer contended that bodies were not "manufactured wholly or in part of wool felt," and therefore not dutiable under 1115 (b). The United States Customs Court disallowed the protest on the grounds that legislative history clearly showed that paragraph 1115 (b) was intended to cover the bodies in question. The importer appealed this decision and on November 22, 1937, the Court of Customs and Patent Appeals reversed the lower court and sustained the protest of the importer on the grounds that legislative intent was immaterial unless the language was ambiguous. The importer satisfied the court that bodies are not "manufactured of wool felt" even though they are wool felt after they are manufactured. The court does not appear to have given any consideration to the fact that the phrase "manufactured of wool felt" refers to "hats, etc." and not to "bodies, etc."

The effect of the court's decision is to make unfinished "hat bodies and shapes" dutiable as "clothing and articles of wearing apparel" at 33 cents per pound and 45 percent ad valorem under paragraph 1115 (a) instead of 40 cents per pound and 55 percent ad valorem as heretofore classified.

ACTUAL USE OF PARAGRAPH 1115 (B) IN ACCORDANCE WITH INTENT OF CONGRESS

The action of the Court of Customs and Patent Appeals is the only exception to a series of official actions which have classified wool-felt bodies under paragraph 1115 (b).

Among these are the Treasury Department, in connection with entering the 110,000,000 wool-felt bodies imported since 1930; the Treasury Department, in connection with dumping complaints; the Tariff Commission, in its 1931 report on wool-felt hat bodies under section 336 of the act of 1930; the Tariff Commission, in its 1934 report on wool-felt hat bodies under section 3 (e) of National Industrial Recovery Act; the President, in his proclamation published in Treasury Decisions 44715; the United States Customs Court and the Court of Customs and Patent Appeals in their decision in the case of *Feltex Corporation* v. *Dutchess Hat Works* (21 C. C. P. A. 463), published in Treasury Decisions 46957.

Effect of nullification of paragraph 1115 (b).—If this decision is allowed to become effective—

The Government will have to rebate about $2,500,000 to the importers.

Domestic producers of wool-felt bodies and wool-felt hats will be unable to meet the respective reductions of 30 cents and $1.80 per dozen in the selling prices of the foreign products and disastrous unemployment will follow.

Domestic agriculture will probably lose the major part of its annual market of approximately 14,000,000 pounds of short wool which is now consumed by the domestic wool-felt body industry. This is especially serious at this time as the United States Census Bureau reports that the consumption of wool in the United States is at a very low point.

Importers will receive rebates of $2,500,000 on all wool-felt bodies and wool-felt has imported since 1930, notwithstanding the fact that these goods have been sold by these importers at prices figured without consideration of these rebates. The reduced duty will enable the importers to absorb that portion of the market which the domestic producers still retain.

Foreign producers in Japan and Italy will benefit by the increased volume which they will gain through the lowered duty. Imports of these items now come 44 percent from Japan and 42 percent from Italy. During 1937 imports from Japan and Italy were approximately 8,000,000 and 7,500,000, respectively. In the case of Japan the 1936 and 1937 imports increased 142 percent and 23 percent, respectively, over preceding years. With the reduction in duty Japan will undoubtedly soon dominate our market.

[2] 25 to 12½ cents per article.

ACTION NECESSARY TO REINSTATE PARAGRAPH 1115 (B) AND SAVE INDUSTRY

In 1930 Congress enacted paragraph 1115 (b) for the sole purpose of covering wool-felt bodies and wool-felt hats, but unfortunately left an ambiguity in the construction of the words. In November 1937 the Court of Customs and Patent Appeals nullified this action by deciding that wool-felt bodies and wool-felt hats did not come within the particular construction which they attributed to the words. It is noteworthy that the concurring opinion of Judge Bland admits his conviction of the intention of Congress, but states that he feels compelled to follow the technical construction rather than to carry out that intention.

To remedy this anomaly there has been introduced in the Senate an amendment to section 29 of the customs administrative bill (H. R. 8099). This bill is now before the Senate Finance Committee. Section 29 of the bill as it passed the House covers a situation like our own where the manufacturers of blankets had been divested of their protection by reason of a decision of the Court of Customs and Patent Appeals. Our amendment adds to section 29 of the bill this sentence: "Paragraph 1115 (b) of the Tariff Act of 1930 (U. S. C., 1934 edition, title 19, sec. 1001, par. 1115 (b)) is hereby amended by deleting therefrom the word 'felt.'" By deleting the word "felt" from paragraph 1115 (b) of the Tariff Act of 1930 wool felt hat bodies will be restored to that paragraph, which was the original intent of Congress when that paragraph was written.

WOOL HAT MANUFACTURERS' ASSOCIATION,
B. F. SARGENT, Jr., *President.*

AMESBURY, MASS.

(Subsequently Senator Walsh received the following letter and enclosures from Mr. J. W. Farley, which were ordered inserted in the record.)

MERRIMAC HAT CORPORATION,
Boston, Mass., January 29, 1938.

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR WALSH: I want to express our appreciation of the opportunity to be heard before your committee yesterday, and for the courteous hearing which we were given.

It has occurred to me that perhaps, in response to your question of whether or not, because of the lowered rate consequent upon the decision of the Court of Customs Appeals, there had been any great increase of imports, I rather understated what had taken place since that decision, as a result thereof, or otherwise, we believe as a result.

I am enclosing herewith the figures which I said I would furnish to the committee, and you will see, I think, that they indicate very clearly the additional influx which has taken place.

This is perhaps particularly noticeable in "General imports," because a considerable number of the imports have been brought in and left in bond, awaiting a favorable opportunity to take them out. This means that in addition to all goods already in the country, a still further accumulation is awaiting release, which will still further affect the domestic manufactures.

Very truly yours,

J. W. FARLEY.

General imports, wool bodies

Year	Italy		Japan		Others		All	
	Number	Per pound	Number	Per pound	Number	Per pound	Number	Per pound
1932	11,098,152	$0.60			1,186,140	$0.75	12,284,292	$0.62
1933	10,443,168	.71			1,476,504	.69	11,919,672	.71
1934							13,980,430	.98
1935	9,183,341	.95	3,353,810	$0.68	3,130,865	1.03	15,668,016	.91
1936	10,574,068	.96	7,714,537	.72	3,859,239	1.08	22,147,864	.90
1937 (11 months)	7,964,046	1.11	10,103,919	.74	1,781,230	.56	19,849,195	.85

Imports for consumption, wool bodies

Year	Italy		Japan		Others		All	
	Number	Per dozen	Number	Per dozen	Number	Per dozen	Number	Per dozen
1932	11,250,012	0.64			1,395,660	0.75	12,645,672	0.65
1933	10,038,912	.69			1,480,320	.70	11,519,232	.69
1934	12,351,996	.92			975,209	.91	13,327,205	.92
1935	11,093,211	.96	2,703,514	0.68	2,654,308	.98	16,451,033	.92
1936	10,936,366	.94	6,550,388	.69	3,903,181	1.06	21,389,885	.88
1937 (11 months)	6,985,721	1.10	7,807,193	.77	2,054,170	1.08	16,847,084	.94

Senator WALSH. Who else wants to be heard on this subject?

STATEMENT OF MICHAEL F. GREEN, NEWARK, N. J., SECRETARY-TREASURER, UNITED HATTERS, CAP, AND MILLINERY WORKERS INTERNATIONAL UNION

Senator WALSH. Your full name?

Mr. GREEN. Michael F. Green.

Senator WALSH. Where do you reside?

Mr. GREEN. Newark, N. J.

Senator WALSH. Whom are you representing here?

Mr. GREEN. A joint committee. I represent the workers in the industry.

Senator WALSH. Which industry?

Mr. GREEN. The hat trade.

Senator WALSH. And where is that located?

Mr. GREEN. Located all over the United States.

Senator WALSH. Are the workers all unionized?

Mr. GREEN. Seventy percent. The speaker is the secretary-treasurer of that organization known as the United Hatters, Cap, and Millinery Workers' International Union.

Gentlemen, we are here presenting the viewpoint of the workers in this industry on the matter just brought to your attention by the gentleman preceding me. The court interpretation as to wool felt will make the most serious difference to the workers in the industry, because, as we have analyzed the figures, if 1115 (b) is stricken out, through this interpretation it will mean a difference of 30 cents per dozen on the body felts from which we fabricate the hats.

The decision further eliminates 12½ cents per unit, in fact, $1.50 a dozen, which will mean a differential of $1.50 to $1.80 per dozen hats manufactured in this industry. It is impossible to conceive what will become of the industry, because the industry cannot stand it. As the gentleman preceding me stated, the importations from one of those countries alone has changed, according to the figures, 142 percent in this particular wool-felt industry on hats.

Senator WALSH. Increased importations?

Mr. GREEN. Increased importations.

Senator WALSH. In what period of time?

Mr. GREEN. Would the Senator permit that question to be answered by a succeeding speaker?

Senator WALSH. Very well, sir.

Mr. GREEN. I rather take the position that I am speaking for the workers in the industry, that the figures and the facts might also be read by me, but I prefer that that be done by the other gentleman.

Senator WALSH. Very well.

Mr. GREEN. We have 50,000 workers in this industry in the United States. This particular portion of the industry is centralized in the States of Massachusetts, Connecticut, New York, New Jersey, and Pennsylvania, insofar as the fabrication of the body work is concerned, the actual first manufacture, but it is distributed throughout the 48 States where it is then fabricated into the final hat, through what we term the millinery division of our organization.

You can readily see, gentlemen, that with this differential in cost of dozens as against the American producer, that it will have a disastrous effect upon the employment of these men and women in the industry. We know that the intent of the act by Congress was purposely to take care of the specific articles mentioned in that subdivision, or that subsection. The congressional and senatorial representatives of the States had to do with that legislation for many years, and we used the terminology of the trade.

We have wool felt and fur felt, both types of felt being made from the hairs of animals—wool making one type of felt and the hair of rabbits and smaller animals being used for fur felt. If we did not use the term "fur felt," Senator, we would have to call a hat a fur hat. Now, when you call a hat a fur hat you are then dealing in the Siberian and Russian type of fur.

A hat is felted only when the fabrication process brings the hair to the felt, making felt from the very beginning.

There is the natural tendency of hair to felt, the fibers intertwine, and whether it is hand or machine processed, it naturally felts.

Years ago we only had fur felt, and the term "wool felt" came into vogue as defining the distinction between the two types of felt which finally make the same character of hat. Insofar as the layman is concerned, he could not determine the difference in most of these qualities. Wool or fur may have the same dimensions, the same trimming, the same appearance, the same color, and you could hardly detect them apart, in certain lines.

If this decision is not corrected by the Congress it will have a still more far-reaching effect. If such a hard-line decision can be accepted as nullifying the intent of Congress there is nothing to prevent the same line of distinction in technicality being drawn in fur felt, but the position might also be taken by the importing interests that fur is a commodity by itself, and that felt is nonexistent, so that the Government is facing not alone a tremendous assault upon the intent of Congress in this particular thing, but in the fur felts as well.

The representative of the workers in this industry states that we are thoroughly in accord with the amendment making a clear definition of the intent of Congress in the first place, and that we hope that the Finance Committee will so recommend.

Senator WALSH. Very well, sir. Who else is to appear on this subject?

STATEMENT OF JOSEPH HELFER, NEW YORK CITY, REPRESENTING THE MILLINERY STABILIZATION COMMITTEE

Senator WALSH. Will you state your name?

Mr. HELFER. Joseph Helfer, New York City.

Senator WALSH. You represent the Millinery Stabilization Committee.

Mr. HELFER. Yes, sir.

Senator WALSH. You may proceed.

Mr. HELFER. Mr. Chairman, and gentlemen: I appear in full support of the appeal made to you gentlemen by Mr. Farley, in behalf of the problem facing the millinery industry and the body industry by this recent decision, with the inclusion that I speak in the interest of 600 manufacturers in the metropolitan area. The majority of these 600 are all small units, largely undercapitalized.

I am identified with this millinery industry for 32 years. I have seen the industry in days when a man took pride in being identified with it, until about 4 or 5 years ago when the foreign countries started to use the millinery industry in this country as the dumping ground of the cheap wool-felt body. I have seen that part of the industry being kicked around like a football, until we are today lying in the gutter. However, the industry tried to cope with the situation, without being further alarmed than necessary.

The purpose of the committee is an impartial tribunal created by suggestion of the mayor of New York and comprised of three public service men, without remuneration, to find facts and plan for the stabilization of the millinery industry. However, we find that by this recent hair-splitting decision of the Customs Court these manufacturers will not only have to cope with the problems of the industry created by the dumping of these bodies into our market, but a greater element of danger appeared by the fact that fully fabricated and manufactured hats will possibly and without question be shipped into this country in competition with our industry. We find, if that were the case, that there is nothing else for these 600 manufacturers, who depend upon the lower bracket millinery to wind up their business, if they still have one, and consign themselves to the scrapheap, because it is physically impossible for these men to stay in business, trying to maintain the American standards of industry and labor, in competition with the standards of industry and labor of these foreign countries, especially those of Japan and Italy.

Senator WALSH. Very well, sir. Thank you. At this point there may be inserted in the record the letter from the Treasury Department with reference to the amendment offered by Senator Guffey.

JANUARY 27, 1938.

Hon. PAT HARRISON,
Chairman, Committee on Finance, United States Senate.

DEAR MR. CHAIRMAN: Further reference is made to a letter received from the clerk, Committee on Finance, United States Senate, dated January 14, 1938, enclosing a copy of an amendment to H. R. 8099 intended to be proposed by Senator Guffey and requesting a statement of this Department's views on the proposed legislation.

The proposed legislation, if enacted into law, would amend paragraph 1115 (b) of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 1115) by deleting therefrom the word "felt."

Paragraph 1115 (b) of the Tariff Act of 1930 reads as follows:

"Bodies, hoods, forms, and shapes for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 percent ad valorem and, in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), 25 cents per article."

In a proclamation, effective April 15, 1931, T. D. 44715, the President reduced the rate of 75 percent ad valorem specified in that paragraph to 55 percent ad valorem and the rate of 25 cents per article to 12½ cents per article. A copy of T. D. 44715 is enclosed.

The proposal now under consideration would, if accepted, extend the classification provided in the subparagraph above quoted to articles of the character described therein, if manufactured wholly or in part of wool, whether or not made by the felting process. It has been the practice to classify under this subparagraph hat bodies or shapes consisting of wool felted in the process of manufacture. In a recent decision, published as (1937) T. D. 49335, the United States Court of Customs and Patent Appeals reversed a decision of the United States Customs Court and held that in the production of certain wool hat bodies, wool felt did not exist as an entity until the completion of the hat bodies, and that, accordingly, such hat bodies were not "manufactured wholly or in part of wool felt." The result of this decision was to sustain the importer's protest claiming classification under paragraph 1115 (a) of the Tariff Act of 1930, covering "clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool." Copies of the decisions mentioned are herewith enclosed for your information.

If the word "felt" is deleted but no other change is made in paragraph 1115 (b), articles such as those which were the subject of T. D. 49335, supra, would be classifiable under the amended paragraph 1115 (b), but other finished and unfinished headwear, wholly or in part of wool, would also be classifiable under the amended provision. This is particularly the case with respect to knit or crocheted headwear, wholly or in chief value of wool, which is now provided for in paragraph 1114 (d) of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 1114).

Certain proclamations of the President (1932), T. D. 45756 and (1936) T. D. 48316, have been based upon this present classification. The proclamation in T. D. 48316 was made pursuant to a trade agreement entered into between United States and France in connection with which the United States obligated itself not to assess duties of more than 44 cents per pound and 30 percent ad valorem on "knit or crocheted wool hats, berets, etc., valued at not more than $2 per pound." Interference with paragraph 1114 (d) and these proclamations and with the application heretofore given to paragraph 1115 (a) might be avoided by deleting from paragraph 1115 (b) the words "manufactured wholly or in part of wool felt" and inserting in lieu thereof "wholly or in chief value of wool but not knit or crocheted nor made in chief value of knit, crocheted, or woven material." On the basis of the information presently available in the Department, it is believed that this change would make paragraph 1115 (b) applicable to all the articles heretofore classified thereunder without extending its application to any substantial volume of other articles.

In view of the modification of rates of duty affected by the proclamation mentioned in the third paragraph of this letter, and in order to prevent any uncertainty as to the application of the proclaimed rates if the law is amended, it would seem to be appropriate to insert a comma and "as modified by the President's proclamation of March 16, 1931 (proclamation No. 1941, 47 Stat., pt. 2, 2438)," immediately after the final parenthesis of the code citation in the proposed amendment as now drafted.

If the desired amendment is framed in the manner suggested, the Department does not believe that its enactment would result in any new administrative difficulties.

Very truly yours,

(Signed) WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

(T. D. 48700)

Wool felt hat bodies—Construction, paragraph 1115 (b), Tariff Act of 1930—Legislative intent

COHN & LEWIS *v.* UNITED STATES

Where by the use of a rule of construction a result is arrived at which is contrary to the legislative intent, the rule of construction must yield. *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. 285, T. D. 46078, cited.

Held that the provision in paragraph 115 (b), Tariff Act of 1930, for "bodies * * * for hats * * * manufactured wholly or in part of wool felt," applies to wool felt hat bodies manufactured by processes at no stage of which wool felt exists as a separate and distinct entity apart from the hat body, examination of the legislative history of the provision showing such to be the intent of the Congress in its enactment.

United States Customs Court, First Division

Protest 405354-G against the decision of the collector of customs at the port of New York

[Judgment for defendant.]

(Decided December 9, 1936)

Puckhafer & Rode (*John R. Rafter* of counsel) for the plaintiffs.
Joseph R. Jackson, Assistant Attorney General (*Marcus Higginbotham, Jr.*, and *Ralph Folks*, special attorneys), for the defendant.
Lamb & Lerch, amici curiae.

Before MCCLELLAND, SULLIVAN, and BROWN, Judges; SULLIVAN, J., concurring; BROWN, J., dissenting

MCCLELLAND, Presiding Judge: This case involves the classification and consequent assessment of duty on wool felt hat bodies. Duty was assessed thereon by the collector under the provisions of paragraph 1115 (b) of the Tariff Act of 1930, which, so far as pertinent, reads:

"Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; * * *."

The foregoing rates were decreased by Presidential proclamation on March 23, 1931, but the hat bodies in issue were imported before the effective date of such decreases.

While numerous claims are made in the protest, that evidently relied upon is the one for duty at the rate of 33 cents per pound and 45 per centum ad valorem under paragraph 1115 (a), which, so far as pertinent, reads:

"Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool, valued per centum ad valorem; * * *"

When the protest was called for trial it was originally submitted on the following stipulation of counsel:

"1. That the merchandise covered by the above entitled protest consists of wool felt in the form of bodies for hats valued at not more than $4.00 per pound.

"2. That said merchandise is the same in all material respects as the merchandise which was the subject of decision by the United States Court of Customs and Patent Appeals in Suit No. 3392—*Henry Pollak, Inc.*, v. *United States*, 19 C. C. P. A. 215, and in Suit No. 3731—*Henry Pollak, Inc.*, v. *United States*, T. D. 47066, the records of which cases are incorporated into the record in the above entitled case.

"3. That Exhibit 1 in said Suits Nos. 3992 and 3731 truly represents the merchandise covered by the above entitled protest.

"4. That said bodies for hats were made of the same kind of material and by the same processes of manufacture as Exhibit 1 in said Suits Nos. 3392 and 3731."

Prior to the disposition of the case by the courts, however, a motion was made by counsel for the Government to reopen the submission which was duly granted.

No witnesses were called to testify on behalf of the plaintiffs after the reopening of the submission, but six were called on behalf of the defendant. The first of these was William H. Rowe, Jr. The basis of his familiarity with hat bodies, such as Exhibit 1 in suit 3731, the record in which case, including the exhibit, is in evidence in the case at bar, he stated to be that he had spent some time in Europe, more particularly in Italy, and in his buying capacity had

visited the factories which produced hat bodies similar to those in issue. He also visited three factories in the United States, and had observed the production of articles like Exhibit 1 in all of these factories.

Detailing the processes leading up to hat bodies in the condition of Exhibit 1 from the very beginning he stated that first the wool mix is put into what is termed a carding machine which combs and cleans the wool and brings it to the form of a wool mattress. It is then put into a second carding machine which produces a thin veil which is wound around cone-shaped wooden blocks. That process results in what is called the carded form of wool, represented by Illustrative Exhibit A. The next step is a hardening process which is the first felting operation, the result of which is shown by Illustrative Exhibit B. The third operation is a shrinking and tightening process, the result of which is illustrated by Illustrative Exhibit C. The fourth operation the witness called the "bumping" operation, the effect of which results in further shrinking and tightening. The result of that process is illustrated by Illustrative Exhibit D. The next process is the dyeing process, which is illustrated by Illustrative Exhibit E.

Following the dyeing operation the next process is a further bumping or shrinking process, the result of which is shown in Illustrative Exhibit F. The next process is a final tightening operation, described by the witness as "the final felting operation," the result of which is shown in Illustrative Exhibit G. It will be noted that at this stage the article is still conical in shape. The next process the witness described as "tip stretching." Upon being asked what the process did to the article he replied, "That starts to form the felt." The result of this formulation is shown in Illustrative Exhibit H, which has passed beyond the conical shape shown in Illustrative Exhibit G and has taken on the form of a hat crown. In the next process the witness stated that the felt is pulled on a wooden block to give it form, and the effect of this process is shown in Illustrative Exhibit I. Following the condition represented by Illustrative Exhibit I the felt is dried and then shaved or pounded. This last described process brings the hat body to the condition represented by Illustrative Exhibit J, which by comparison is substantially the same as Exhibit 1 which concededly represents the imported merchandise.

In all of its main features the testimony of Mr. Rowe is confirmed by the five additional witnesses called to testify for the defendant, and agrees with that given by the witness Ferretti in the *Pollak* case, suit 3731, reported in 22 C. C. P. A. 81, T. D. 47066, *supra*, so that the question to be determined is whether or not the collector was justified in his construction of the law upon which he decided that these hat bodies were manufactured of wool felt.

It is not contended by either side that the decisions of the Court of Customs and Patent Appeals in the *Pollak* cases are controlling of the issue here presented, since those cases involved a different issue and arose during the life of the Tariff Act of 1922 wherein the paragraph involved was couched in different language.

The contention of the plaintiffs herein is that the hat bodies involved were not manufactured of wool felt, inasmuch as at no time prior to the beginning of the processes of production of the hat bodies was the material wool felt in existence as a separate and distinct entity.

In support of their contention plaintiffs have cited, among others, the cases of *United States* v. *Macy & Co.*, 7 Ct. Cust. Appls. 8, T. D. 36256, and *J. J. Gavin & Co., et al.* v. *United States*, T. D. 47985, both of which involved issues similar to that in the case at bar and the decisions in which were based upon the general rule of construction in customs law that the words "manufactured of" or "made of" presuppose that the material of which an article is manufactured was a separate and distinct entity at the time it was manufactured into the article.

I would be inclined to follow this rule in the case at bar were it not for the fact that my attention has been called to what appears to be a contrary legislative intent with regard to paragraph 1115 (b) here under consideration. In *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. 285, T. D. 46078, it was aptly stated tha —

"All rules of constructio must yield if the legislative intent is shown to be counter to the apparent intent indicated by such rule. The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent."

As before stated, in the tariff revision of 1930 a change was made in the provisions of paragraph 1115 as embodied in the Tariff Act of 1922 by making

a special provision in the new act, among other things, for hat bodies manufactured of wool felt. I think we have here an instance where reasonable argument may be made in support of the respective contentions of the parties to the suit in the absence of reference to the history of the proceedings before the Ways and Means Committee and the Congress which resulted in the above change.

In the volume entitled "Tariff Readjustment—1929, Hearings before the Committee on Ways and Means of the House of Representatives, Vol. XI, Schedule 11," beginning at page 6482 under the caption "Wool Felt Hats and Hat Bodies", I find the statements, made before the committee considering the proposed revision, of representatives of the domestic manufacturers of wool felt hats and wool felt hat bodies. A higher rate of duty upon wool felt hat bodies than had been assessable under the preceding Tariff Act of 1922 was sought by these interests, and to this end they requested that separate provision be made in the proposed tariff act for wool felt hats and wool felt hat bodies. This is shown in their brief found at page 6491 under the caption "Brief of Manufacturers of Wool Felt Hats and Wool Felt Hat Bodies" as follows:

* * * * * * *

"SUGGESTED CHANGES IN CLASSIFICATION AND RATES

"A. The elimination of wool felt hats and wool felt hat bodies from the present classification as "Clothing and articles of wearing apparel." by the changing of the phraseology in the existing law by the insertion of the words "not specially provided for" in paragraph 1115 of Section 11, so that paragraph 1115 as so amended will read:

" 'PAR. 1115. Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, composed wholly or in chief value of wool, not specially provided for; valued at not more than $2 per pound etc., * * * [balance of paragraph unchanged.]'

"B. Making special provision for wool felt hats and wool felt hat bodies by a separate classification and the establishment of rates of duty under the appropriate schedule and as a new and separate paragraph of the dutiable list, as follows:

"SCHEDULE

" 'PAR. ——. Hats, caps, capelines, bonnets, beret, and hoods for men's, women's, boys' and children's wear, trimmed or untrimmed, including bodies, hoods, plateaux, forms or shapes for hats, caps, capelines, bonnets, or beret, composed wholly or in chief value of wool, valued at not more than $1.35 per pound, 45 cents per pound; valued at more than $1.35 and not exceeding $1.55 per pound, 40 cents per pound; valued at more than $1.55 per pound, 35 cents per pound; and in addition thereto, on all the foregoing, if weighing not more than 30 ounces to the dozen, 70 percent ad valorem; if weighing more than 30 ounces to the dozen, 65 percent ad valorem, and, in addition thereto, on all the foregoing, if pulled or stamped, or blocked or trimmed, $3 per dozen.' "

It is manifest that while the Congress appears to have complied with the request of the manufacturers the proposed paragraph above quoted was not adopted, either as to language or as to rates, and a significant fact in that respect is that the proposed paragraph did not contain any provision for wool *felt* hat bodies, although the expressed intention of the domestic interests was to seek greater protection for this class of goods. That omission was evidently noted by the committee, since in paragraph 1115 (b) as reported provision was made for duty on articles manufactured wholly or in part of wool *felt* in conformity with the request made by the manufacturers. The Ways and Means Committee in its report to the House of Representatives explained the changes made in the proposed tariff act from the provisions of the Tariff Act of 1922 embodied this significant paragraph:

"*Paragraph 1115:* The committee has made a change in the compensatory duty on clothing proportionate to the change made in the duty on wool. No change is made in the protective rates *except for wool-felt hats and bodies which are specifically provided for.*" [Italics added.]

and it is important to note that paragraph 1115 (b) as reported by the committee was later enacted as part of the Tariff Act of 1930 without change by the Congress.

That the wool felt hat bodies on which the domestic interests sought additional protection were such as are here in issue, that is to say, were manufactured by the identical processes by which the hat bodies in issue were manufactured, I believe is apparent from the fact that such processes are set forth not only in the brief filed with the committee in support of the changes requested, but were also minutely detailed in the verbal statement made by George W. Bollman, representing one of the domestic manufacturers speaking before the committee. These descriptions are in substantial agreement with the details of manufacture concurred in by the witnesses on the trial of this case.

It may be said, therefore, that the wool felt hat bodies for which the domestic manufacturers sought protection and those which the committee had in mind when they made their report and those to which the Congress intended to extend protection were the same as those in issue, and I am convinced that the intent of Congress in framing paragraph 1115 (b) was that wool felt hat bodies such as those under consideration were to be subject to the rates of duty assessed by the collector. To hold otherwise, in my opinion, would be in effect to nullify the evident intent of Congress.

The protest is overruled and the decision of the collector is affirmed. Judgment will be issued accordingly.

CONCURRING OPINION

SULLIVAN, Judge: This cause involves subdivision (b) of paragraph 1115 of the Tariff Act of 1930. This subdivision is new to the present tariff act, and was not embraced within paragraph 1115 of the Tariff Act of 1922, which was the prototype of paragraph 1115 (a) of the Tariff Act of 1930.

Subdivision (b) of paragraph 1115 is as follows:

"(b) Bodies, hoods, forms, and shapes for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; and, in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), 25 cents per article."

Subdivision (b), *supra*, being a new provision, the holdings of this court and our appellate court in *Pollak* v. *United States*, Abstract 24422, 63 Treas. Dec. 1592, and 22 C. C. P. A. 81, T. D. 47066, are not applicable.

The question directly presents itself—What is the meaning of the term "manufactured wholly or in part of wool felt"? The meaning thereof is clear, and it is not necessary for us to go into the history of the enactment to ascertain what private interests wished to have placed in the tariff act, and whether or not Congress enacted such wish into law. We must take the statute as it is written. In my judgment it is not necessary to thumb the Congressional Record to ascertain from arguments of members of Congress, testimony of private individuals, and reports of Tariff Commissions what the facts are. The facts in this case were disclosed in open court before three judges of the United States Customs Court, and we must decide this case on the record there made. It is only in exceptional cases that legislative intent may be determined by studying the history of the legislation. The term "manufactured wholly or in part of wool felt" indicates to my mind a material already in existence, namely, wool felt, and that hat bodies made therefrom are a manufacture of wool felt, dutiable under paragraph 1115 (b), and not as claimed by the plaintiffs.

This term is clear and unambiguous, and does not need any extraneous aid to arrive at its meaning.

The action of the collector in assessing duty on this merchandise at the rates provided in paragraph 1115 (b) was correct, and his judgment should be affirmed. I concur in the conclusion of Judge McClelland.

See my concurring opinion and authorities cited in *Noble* v. *United States*, T. D. 48650, 70 Treas. Dec. ——.

DISSENTING OPINION

BROWN, Judge: In this case the merchandise, hat bodies, was assessed for duty under paragraph 1115 (b), Tariff Act of 1930, as wearing apparel manufactured wholly or in part of felt at 40 cents per pound and 75 per centum ad valorem.

They are claimed to be dutiable at 33 cents per pound and 45 percentum ad valorem under paragraph 1115 (a), act of 1930.

This issue was determined in T. D. 47985, November 6, 1935 (not appealed), where it was held that in order to be "manufactured of felt" within the meaning of that tariff term in paragraph 1115 (b) felt must first be made as a distinct material, and subsequently manufactured into the articles "hat bodies."

While the process of manufacture here is different, the material "felt" is not first produced here any more than it was in the manufacture of the articles considered in T. D. 47985; therefore, the question of law as applied to the facts is identical. Nor does the evidence introduced upon the reopening of the case for further testimony change the legal situation in any particular. Such proof did not show that the material "felt" was first produced and afterward manufactured into hat bodies.

Consequently, following T. D. 47985, the protest should be sustained on the claim for classification under paragraph 1115 (a), act of 1930, at 33 cents per pound and 45 per centum ad valorem.

Judgment should issue accordingly.

DECISIONS OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

(T. D. 49335)

Hat bodies

COHN & LEWIS *v.* UNITED STATES (No. 4071)

1. WOOLEN HAT SHAPES.

Certain woolen hat shapes, stipulated to consist "of wool felt in the form of bodies for hats, valued at not more than $4 per pound," the merchandise being the same in all material respects as the merchandise involved in *Henry Pollak, Inc.* v. *United States*, 19 C. C. P. A. (Customs) 215, and *Henry Pollak, Inc.*, v. *United States*, 22 C. C. P. A. (Customs) 81 (which cases arose under the Tariff Act of 1922), are not "wool felt wearing apparel" under paragraph 1115 (b), Tariff Act of 1930, as classified by the collector, the court being of the opinion that wool felt did not exist as an entity until the completion of the hat forms, and hence that the hat forms in issue were not manufactures wholly or in part of wool felt," under the facts and the authorities cited in the case.

2. MADE OF—MANUFACTURED OF.

It has been a uniform and well-settled holding of this court that the language "made of" or "manufactured of" presupposes that the material of which the article is made or manufactured exists before the article itself comes into existence.

3. STATUTORY CONSTRUCTION.

If the language of a statute be plain and unambiguous, the law should be followed as written and it speaks for itself. Where it is so spoken plainly, no need of rules of construction is present, and recourse to the proceedings of the Congress and the committee thereof having the legislation in charge is unnecessary.

4. PARAGRAPH 1115 IS NOT AMBIGUOUS.

There is no ambiguity in the language which the Congress used in rewriting paragraph 1115 in the Tariff Act of 1930. It used language which has been passed upon by this court for twenty-five years, and of which the Congress must have been fully conversant. It was language which was known to the profession and in the business world, and no difficulty need be had in understanding it.

United States Court of Customs and Patent Appeals, November 22, 1937

APPEAL from United States Customs Court, T. D. 48700

[Reversed and remanded.]

Puckhafer & Rode (*John R. Rafter* of counsel) for appellant.

Joseph P. Tumulty, Black, Varian & Simon (*John Walsh, Alfred W. Varian,* and *Herbert M. Simon* of counsel) *amici curiae* and on behalf of various importers.

Joseph R. Jackson, Assistant Attorney General (*Ralph Folks* and *Joseph F. Donohue*, special attorneys, of counsel), for the United States.

Lamb & Lerch (*J. G. Lerch* of counsel) *amici curiae* and on behalf of the United States.

[Oral argument October 13, 1937, by Mr. Rafter, Mr. Walsh, Mr. Folks, and Mr. J. G. Lerch]

Before GRAHAM, Presiding Judge, and BLAND, HATFIELD, GARRETT, and LENROOT, Associate Judges

PER CURIAM:[1]

The appellant imported certain woolen hat shapes at the port of New York under the Tariff Act of 1930, which the collector classified as "wool felt wearing

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[1] The opinion in this case was prepared by the late Presiding Judge Graham and adopted by the court after his death.

apparel," under paragraph 1115 (b) of said act. The importer protested, claiming the goods to be dutiable under paragraph 1114 (d) as outerwear and articles wholly or in chief value of wool, or, alternatively, as clothing and articles of wearing apparel, wholly or in chief value of wool, under paragraph 1115 (a), or as pile fabrics, finished or unfinished, in chief value of wool, under paragraph 1110, or as felts, not woven, in chief value of wool, under paragraph 1112, or as manufactures in chief value of wool under paragraph 1120 of said act.

On the hearing before the United States Customs Court, the importer relied upon the claim that the merchandise was dutiable under paragraph 1115 (a) at 33 cents per pound and 45 per centum ad valorem.

Said paragraph 1115 is as follows:

"PAR. 1115. (a) Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool, valued at not more than $4 per pound, 33 cents per pound, and 45 per centum ad valorem; valued at more than $4 per pound, 50 cents per pound, and 50 per centum ad valorem.

"(b) Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; and, in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), 25 cents per article."

The parties stipulated the records in No. 3731, *Henry Pollak, Inc.*, v. *United States*, 19 C. C. P. A. (Customs) 215, T. D. 46324, and *Henry Pollak, Inc.*, v. *United States*, 22 C. C. P. A. (Customs) 81, T. D. 47066, into the record, and it was further stipulated that the merchandise in both the cited cases was the same in all material respects as the merchandise here involved.

It was also stipulated by the parties that the merchandise covered by the protest in this case "consists of wool felt in the form of bodies for hats, valued at not more than $4 per pound."

After the submission on stipulation the Government made a motion to restore the cause to the calendar for the purpose of taking further testimony, and this motion was allowed. Thereupon six witnesses were called and testified on behalf of the Government.

There was a division of opinion among the judges of the First Division of the United States Customs Court, which heard the case. Presiding Judge McClelland was of opinion that the protest of the importer should be overruled. In his separate opinion he held that he would be inclined to agree with the importer that the material of which the imported merchandise was composed had never been wool felt, as a separate entity, and that, therefore, the imported goods were not bodies and shapes manufactured in whole or in part of wool felt under paragraph 1115 (b), were he not constrained to hold otherwise in view of the legislative history of the particular provision, which, in his view of the matter, made it necessary to hold that the congressional intent plainly was to the contrary. Judge Sullivan agreed with Judge McClelland that the protest should be overruled. He, however, thought the statutory language was unambiguous and no recourse should be had to legislative history for construction. Judge Brown dissented and was of opinion that the protest should be sustained under paragraph 1115 (a).

Judgment was accordingly entered overruling the protest and the importer has appealed.

From the incorporated records, and from the testimony, including samples and photographs in this case, we are able to get a good understanding of the method of manufacture of the imported articles. The facts as hereinafter stated are largely established by the testimony of William S. Rowe, Jr., a witness for the Government. The basic material is wool and noils mixed. This wool mixture is first put into a mattress carding machine which combs and cleans the mixture and causes it to issue in the form of a wool mattress. It is then put into a second carding machine which throws off a thin veil of wool which is wound around wooden blocks, and which is called "the carded form of wool." As the web comes out of the second carding machine, it is evenly laid over a double cone-shaped form from which when completed, the hat forms may be taken by cutting the double cone form or hat in the middle. From the time of the second process forward, the hat form constantly goes through successive processes. The next step is a hardening process, or what is called the first felting operation. The next operation is a shrinking operation, shrinking and tightening the fibers. After that the material is shrunk and tightened by a bumping operation. The next operation is a dyeing process. Then follows

another bumping operation which shrinks the hat form and tightens it. The next operation is a final tightening operation. Following this is an operation by which the tip of the hat form is stretched. The next process is a process of pulling the form onto a wooden block to give it shape. Finally, the form is dried and it is then shaved or pounded and is ready for its final use as a hat body.

In the first case covered by the stipulation and involving the same material that is here imported; that is, *Henry Pollak (Inc.)* v. *United States*, 10 C. C. P. A. (Customs) 215, T. D. 40324, the classification was under paragraph 1115 of the Tariff Act of 1922, as clothing and articles of wearing apparel in chief value of wool. In an extensive record in that case, an effort was made to establish that the goods were properly classifiable under paragraph 1119 as manufacturers not specially provided for, wholly or in chief value of wool. The testimony established that the felt material was used for hats, but was used also for trimming, hand bags, and various other articles. The court below was of the opinion that the goods were properly classified, and that the use for other purposes than hats was fugitive, and we affirmed the decision.

The second case referred to, *Henry Pollak, Inc.*, v. *United States*, 22 C. C. P. A. (Customs) 81, T. D. 47066, involved the same material and the same competing paragraphs of the Tariff Act of 1922 as the first. This case was practically a retrial of the first case, and the same conclusion was reached.

As we view the matter, there is but one new feature to be considered here, and this is largely a question of law. The Congress, in rewriting paragraph 1115 in the Tariff Act of 1930, divided the same, adding subparagraph (b), which seems to have been enacted for the purpose of taking care of hats and like articles which had not been theretofore specifically mentioned, but which had caused considerable litigation. In writing this subparagraph, this language was used: "Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt."

It is claimed by the Government here that the goods are properly classifiable under said subparagraph (b), which view was concurred in by a majority of the United States Customs Court. On the other hand, the importer claims that because of the language of said subparagraph (b) they cannot be included therein, but must be relegated to paragraph 1115 (a). The reason urged by the appellant is that under a long line of decisions by this court and the United States Customs Court, the language "manufactured wholly or in part of wool felt" must be construed to mean that there must have been felt before the hat bodies were manufactured, and if there was no felt as an independent entity, and the manufacture of the hats or hat forms and the felt proceeded simultaneously, then the bodies and shapes, etc., were not manufactured wholly or in part of wool felt.

The testimony in this case on the part of the Government is an attempt to show that the forms and shapes were, in fact, manufactured from wool felt. The Government claims that this testimony, taken at its full value, shows that the felt of which the forms were made appeared in the processing at the second stage; that after the wool had been wound upon the wooden cones as the first stage, at the next stage, namely, the first felting process, and thereafter, the material was wool felt, and that the hat form from and after the second stage was being made out of wool felt. Thus, Government counsel argue that even if it be admitted that there must be first felt before the hat forms are brought into existence, the testimony shows that this is true in the instant case.

It is quite plain, from an examination of the authorities, that the law is as has been urged herein by the appellant. A glance at some of these authorities will be in order.

Burlington Venetian Blind Co. v. *United States*, 1 Ct. Cust. Appls. 374, T. D. 31456, is the first of the so-called ladder tape cases. In that case the articles involved were so-called ladder tapes, made of cotton as entireties on looms, and used in the manufacture of venetian blinds. Although the question did not seem to have been directly raised, this court intimated very strongly that the objects before it might not properly be held to be manufacturers of tapes previously manufactured.

This ladder tape question arose again in *United States* v. *Burlington Venetian Blind Co.*, 3 Ct. Cust Appls. 378, T. D. 32967. Here the merchandise is described as two strips of woven fabric, united at regular intervals by means of other much higher woven strips of fabric, and which are designed for the purpose of holding slats, and are used in the manufacture and repair of venetian blinds. It is said in the opinion that the object, when it comes from the loom,

is completed except for the cutting of the small connecting threads. The conclusion of the court was that the article was not made of tapes or webs, as it had never assumed those independent forms, but that it had always been and was intended to be a ladder tape.

Another ladder tape case is *United States* v. *Walter et al.*, 4 Ct. Cust. Appls. 95, T. D. 33371. This case introduces the element of commercial designation, in which the court held contrary to the view of the importer.

United States v. *Macy & Co.*, 7 Ct. Cust. Appls. 8, T. D. 36256, involved certain lead and cotton clo-clo braids, the merchandise consisting of pieces of lead molded upon a flax cord, the whole being covered by tubular cotton braiding. It was contended that the material was dutiable as being in part of braids. The testimony showed that the articles were manufactured as a unit, and that the braid, as an entity, had never existed prior to its being found in the merchandise in issue and had never had a separate independent existence as an article or material. In view of this, this court was of opinion that the article was not made in whole or in part of braid.

Western Blind & Screen Co. v. *United States*, 9 Ct. Cust. Appls. 68, T. D. 39942, was another ladder tape case, in which we reached the same conclusion as stated in the above-cited ladder tape cases.

In *United States* v. *Dodge*, 13 Ct. Cust. Appls. 222, T. D. 41176, cotton rugs were involved. The question was whether they were properly classified as manufactures "made or cut from cotton pile fabrics," or carpets and rugs made wholly of cotton. The testimony showed that the rugs were woven on the loom to their final desired size, and that all that remained to be done as they came from the loom was to cut the selvage and sew it fast. The rug, as completed, had a pile. This court held that the rugs were not made from pile fabrics.

In *Angel & Co. (Inc.)* v. *United States*, 15 Ct. Cust. Appls. 19, T. D. 42132, certain extraction thimbles were classified as manufactures of paper. The merchandise was complete finished paper thimbles ready for use. It was claimed that the articles were manufactures of pulp. The entity of paper had never existed until these thimbles were made as a completely finished article. We held that they were manufactures of pulp.

One of our decisions on this interesting subject is *Curtis & Van Bernuth Mfg. Co.* v. *United States*, 22 C. C. P. A. (Customs) 651, T. D. 47633. Certain steamer rugs were here involved in chief value of wool not exceeding three yards in length. They were classified as blankets and similar articles "made of blanketing." The testimony showed that the articles were woven in lengths of about 50 or 60 yards, and they were so woven that after a length of 72 inches had been reached, the weft threads were automatically omitted so that the piece might be removed and the process continued. The question at issue was whether the involved articles were made of blanketing. This court held that inasmuch as blanketing had never existed in this case as a separate entity, it followed that the imported articles were not made of blanketing, but were blankets or robes, as the case might be.

The principle of the foregoing decisions was followed by us in two recent cases: *Swedish Venetian Blinds Co.* v. *United States*, 24 C. C. P. A. (Customs) 20, T. D. 48201, *Elmer T. Middleton* v. *United States*, 25 C. C. P. A. (Customs) —, T. D. 49265.

In addition to the authorities cited, there are many applicable authorities in the reports of the United States Customs Court which it will not be necessary to refer to here, but which are in point and are fully digested and noted in the briefs.

From these citations it is apparent that from the first session of this court it has been a uniform and well-settled holding that the language "made of" or "manufactured of" presupposes that the material of which the article is made or manufactured exists before the article itself comes into existence.

It was the opinion of Presiding Judge McClelland that the trial court should follow the line of cases to which we have heretofore referred, were it not for what he regarded as contrary legislative intent, and cited the decision of this court in *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. (Customs) 285, T. D. 46078, where it was said: "All rules of construction must yield if the legislative intent is shown to be counter to the apparent intent indicated by such rule. The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent." Proceeding upon this theory, the presiding judge was of opinion that the congressional proceedings, including

the report of the Ways and Means Committee, were such as to lead to the conclusion that the Congress was intending to include hat forms, such as those involved here, within said paragraph 1115 (b), when the act of 1930 was drawn.

The law stated in the *Clay Adams* case, *supra*, and as quoted by the presiding judge, is the law as we understand it. However, it will be observed that the statement is that all rules of construction must yield if there be a contrary congressional intent shown. However, we must still retain in mind the law which is basic, as we view it, that if the language of a statute be plain and unambiguous, the law should be followed as written and it speaks for itself. Where it has so spoken plainly, no need of rules of construction is present, and hence recourse to the proceedings of the Congress and the committee having this legislation in charge, is unnecessary.

We are unable to discern any ambiguity in the language which the Congress used here. It used language which has been passed upon by this court for twenty-five years, and of which the Congress must have been fully conversant. It was language which was known to the profession and in the business world, and no difficulty need be had in understanding it.

In this view of the situation, if this material had never had a separate entity as wool felt, then there is no difficulty in the answer to the question presented. The Government contends that the testimony shows that from the second operation forward, the manufacture of these hat bodies was from wool felt. The testimony shows, however, that from the very initiation of the process of winding wool upon the hat forms, the process was one of hat form making. As the form advanced toward its final condition, the felting process continued and it was never until the last process that the material so processed became felt.

The court is of opinion that wool felt did not exist as an entity until the completion of these hat forms, and hence that the hat forms before us were not "manufactures wholly or in part of wool felt," under the facts and authorities.

The judgment of the United States Customs Court is *reversed* and the cause *remanded* for further proceedings.

CONCURRING OPINION

BLAND, Judge: It is with considerable reluctance that I feel compelled to agree with the conclusion reached by this court in reversing and remanding the judgment of the trial court. This action results in a regrettable anomaly. After studying carefully the legislative history, I do not have the slightest doubt that when Congress framed subdivision (b) of paragraph 1115, it intended to include therein the particular kind of merchandise here involved.

Courts have frequently said that the intent of the law was the law and that the master rule of construction was to so construe statutory language that it reflected the intent of the legislature. Of course, there are limitations to this rule. Some language must be found in the statute that calls for construction before its plain meaning can be ignored. *United States v. Stone & Downer Co.*, 274 U. S. 225. Phrases like that here involved have been so frequently construed by this and other courts that their meaning and effect is clear—no ambiguity exists. It is well settled that we cannot go to the legislative history of a statutory provision to produce ambiguity. *Railroad Commission of Wisconsin et al. v. Chicago, Burlington & Quincy Railroad Company*, 257 U. S. 563, 589. If any force is to be given to this line of cases, I know of no place where it fits better than in the decision of the issue at bar. When Congress wrote the provision it knew of the long line of holdings by this court which requires a conclusion that there must have existed a preexisting wool felt before the hat bodies could be classified under the disputed paragraph. Notwithstanding this fact, Congress deliberately used the phrase "manufactured wholly or in part of wool felt."

I am inclined to believe that the Supreme Court of the United States, as presently constituted, might take a different view of this case, but to do so it would have to ignore the decisions cited and discussed herein by the late Presiding Judge Graham. Since the opinion delivered by Chief Justice Taft in *United States v. Stone & Downer Co.*, 274 U. S. 225, there has been a growing tendency of the courts of this country generally, including the Supreme Court, to liberalize the rule as to what you may consult and what extrinsic facts you may consider in an effort to arrive at the intent of Congress.

(T. D. 44715)

Wool-felt hats and bodies therefor

President's proclamation under section 336, tariff act of 1930, decreasing the rates of duty fixed in paragraph 1115 (b) of the said act.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D. C., March 23, 1931.

To collectors of customs and others concerned:

There is published for your information and guidance the appended proclamation of the President issued under the provisions of section 336 of the tariff act of 1930 decreasing the rates of duty on the merchandise provided for in paragraph 1115 (b) of the said act as follows:

Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, from 40 cents per pound and 75 per cent ad valorem to 40 cents per pound and 55 per cent ad valorem; and in addition thereto on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), from 25 cents per article to 12½ cents per article.

These decreases will be effective on and after April 15, 1931.

(Signed) F. X. A. EBLE,
Commissioner of Customs.

DECREASING RATES OF DUTY ON WOOL-FELT HATS, AND BODIES THEREFORE

By the President of the United States of America

A PROCLAMATION

WHEREAS under and by virtue of section 336 of Title III, Part II, of the act of Congress approved June 17, 1930, 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," the United States Tariff Commission has investigated the differences in costs of production of, and all other facts and conditions enumerated in said section with respect to, bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles manufactured wholly or in part of wool felt and hats, bonnets, caps, berets, and similar articles, made wholly or in part therefrom, finished or unfinished, being wholly or in part the growth or product of the United States and of and with respect to like or similar articles wholly or in part the growth or product of the principal competing country:

WHEREAS in the course of said investigation a hearing was held, of which reasonable public notice was given and at which parties interested were given reasonable opportunity to be present, to produce evidence, and to be heard:

WHEREAS the commission has reported to the President the results of said investigation and its findings with respect to such differences in costs of production;

WHEREAS the commission has found it shown by said investigation that the principal competing country is Italy, and that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic articles and the like or similar foreign articles when produced in said principal competing country, and has specified in its report the decreases in the rates of duty expressly fixed by statute found by the commission to be shown by said investigation to be necessary to equalize such differences; and

WHEREAS in the judgment of the President such rates of duty are shown by such investigation of the Tariff Commission to be necessary to equalize such differences in costs of production;

NOW, THEREFORE, I, HERBERT HOOVER, President of the United States of America, do hereby approve and proclaim the following rates of duty found to be shown by said investigation to be necessary to equalize such differences in costs of production;

A decrease in the rates of duty expressly fixed in paragraph 115 (*b*) of Title I of said act on bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, from 40 cents

per pound and 75 per centum ad valorem to 40 cents per pound and 55 per centum ad valorem;

And a decrease in the rate of duty expressly fixed, in addition thereto, in paragraph 1115 (*b*) on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles) (within the limit of total decrease provided for in said act), from 25 cents per article to 12½ cents per article.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 16" day of March, in the year of our Lord nineteen hundred and thirty-one, and of the Independence of the United States of America the one hundred and fifty-fifth.

[SEAL] HERBERT HOOVER.

By the President:

HENRY L. STIMSON,

Secretary of State.

[No. 1941]

Senator WALSH. The next witness is Mr. Lerch.

STATEMENT OF JOHN G. LERCH, NEW YORK CITY, REPRESENTING THE AMERICAN TARIFF LEAGUE

Senator WALSH. Your name is John G. Lerch, your residence is New York City, and you represent the American Tariff League?

Mr. LERCH. Counsel for the league.

Senator WALSH. You may proceed.

Mr. LERCH. This bill H. R. 8099, we appreciate, covers a number of reforms, let us say, that are sponsored by the Treasury Department, as to which we have no objection. As to a number of items, however, and the wording of some of these sections, we feel that it will not accomplish the purpose for which it was apparently intended. I have prepared a memorandum pointing out each of those instances, which I will leave with the reporter.

Senator WALSH. That memorandum may be inserted in the record at the conclusion of your statement.

Mr. LERCH. There are a few places in the bill that I would like to comment on and give my reasons.

Senator WALSH. Very well.

Mr. LERCH. On page 2, line 13, the bill changes. That is the old section 304 of the act of 1930 on marking. The bill changes what appeared there "in legible English words" to "English name of the country."

Our position is that the expression in that section of the act of 1930 has been adjudicated. It is plain as to what it means, and we can see no reason for changing that expression to an "English name." Certainly a name of a country expressed in legible English words is specific and definite, and we can see no reason for changing that language.

On page 3, line 6, in subsection (a), we think that gives to the Secretary of the Treasury too much discretion. We think that if that is going to be in the bill it should be followed by some such proviso as this—

Provided, That no article shall be held incapable of being marked if an article of the same class or kind is marked in any manner by manufacturers in the United States.

In other words, we have had rulings from the Department where this discretion did not exist, under the wording of the old law which is mandatory, where they have exempted competitive articles from marking, when it was practice in the trade in the United States for the domestic articles to be marked.

Senator WALSH. Have you any illustrations of that?

Mr. LERCH. I can furnish them to you. One very outstanding illustration is in the glass container industry.

Now, on page 8, lines 16, 17, and 18, we suggest that that be deleted. That is subsection (F).

Senator WALSH. "Such article is imported for use by the importer and not intended for sale in its imported or any other form," your suggestion is it should be deleted?

Mr. LERCH. It should be deleted. I have for a number of years, some years ago, been connected with the Department of Justice, helping to administer the customs law. This section of the law depends for its enforcement on something in the future, and it is practically impossible of enforcement without great abuse on the part of the importers.

Now as to subsection (G), page 3, line 19, we suggest that inasmuch as that also requires following the merchandise into consumption there should be added to that a provision which compels its enforcement, such as bond, like we have in the carpet-wool paragraph, where the same sort of thing occurs.

Senator WALSH. Have you the language for that?

Mr. LERCH. I have suggested it in my brief.

On page 4, subsection (J), that begins in line 9, we cannot speak too strongly for that. I agree with all that has been said today by the lumbermen as to that particular section. We can see no reason why the Secretary should be given 2 years to publish a ruling and simply because a substantial amount had been imported before January 1, 1937, that you should perpetuate a ruling of the Department. I might comment on the effect of that particular subsection in that if this is adopted the Secretary's ruling cannot be reviewed in the courts. It simply fixes it, because it is a discretionary power exercised by the Secretary with the approval of Congress, and no court will review his discretion.

On page 9, line 8, there is given legislative sanction to a practice which has existed in the Department, the 30-day period before the ruling becomes effective. That 30-day period, we think, should be applicable to a ruling where a lower rate of duty is found as well as a higher rate of duty. It provides for the Secretary of the Treasury changing a rate of duty, and I would suggest the last word in line 8, the word "higher," be changed to "different," and that would make it apply to either a lower or higher rate. If it is going to be made lower, the domestic interests have made their contracts on existing rates of duty and known competition, and if they are going to receive a lower rate of protection then they should have at least 30 days' notice, just as the importer has if it is to be higher.

The next is on page 17, line 9. This is a new piece of legislation. The thing that purports to cure, we feel, has been a well-known practice, settled by judicial decision, but we have no objection to this going into the law.

I was Chief of the Reappraisement Division in the Department of Justice for some years trying these very cases. Now this is limited to where an appraisement has been set aside, found invalid on protest. We suggest, in order to make that effective, you should add after the word "protest," "or an appeal to reappraisement," since appraisements are also held invalid on reappraisement. There is nothing in that section that prescribes the procedure for review and a finding of a new value by the United States customs court. Therefore, to complete that, we submit that there should be added to the end of that section the words "for apeals from a decision of the appraiser." In other words, that prescribes the same procedure in the customs court as now obtains in regular appeals from the appraiser.

On the same page 17, line 17, we suggest that all of those sections be deleted. That covers pages 18, 19, and 20. In other words, where it purports to change the existing section 516 (b) in the tariff act. That is the domestic interest's right to protest. I submit that if the Government is going to repeal 516 (b) it ought to do it in so many words, for here they are effectively accomplishing just that thing in this bill by this section.

To illustrate, they provide here that instead of the present procedure, where a protest is made, after a great deal of red tape prescribed by the existing law, then liquidations shall no longer be suspended, but the domestic interest who had gone through that costly routine to arrive at the point of a valid protest must go through costly litigation and wait until 30 days after the court has decided the protest to have his rate become effective. Obviously, that is not a remedy at all and could never be used economically, because the first minute you appear in the Department with your complaint an importer knows exactly what you are claiming, he is on notice from that minute until the final decision of the court, which may be 2 years later. If it is a staple article, he might bring in 5 years' supply before you ever reach a determination of that issue, and obviously you would be out of business in the meantime. So how could any domestic interest avail itself of the proposed remedy contained in this law?

Senator WALSH. You prefer the present law to this proposed change?

Mr. LERCH. Yes; and I have suggested a better one in my brief.

Senator WALSH. You suggested a substitute?

Mr. LERCH. Yes.

Senator WALSH. Very well.

Mr. LERCH. Mr. Chairman, there are a number of other suggestions just as to a word or two which are covered by my brief and I will not take any more of your time.

(The brief referred to is as follows:)

BRIEF OF THE AMERICAN TARIFF LEAGUE

COMMITTEE ON FINANCE,
The Senate of the United States, Washington, D. C.

GENTLEMEN: We beg to submit on behalf of the American Tariff League the following memorandum of suggested changes in the bill H. R. 8099.

SECTION 3

Section 304 of the Tariff Act of 1930, we feel, is sufficient in its terms to effectuate the administration of marking imported merchandise with the name

of the country of its origin. The discretion vested in the Secretary of the Treasury has proven sufficient to carry out the mandates of the provision. We suggest, therefore, the proposed change be rejected, or if it is the will of the committee that some changes be made, we draw your attention to the following specific recommendations:

On page 2, at line 12, delete "the" at the end of the line and substitute the word "in." At the beginning of line 13, after the word "English", insert the words "words the."

The reason for the suggested change is that the provision in the Tariff Act of 1930 now reads the same as our proposed language, and we can see no reason for changing this language, which has received judicial construction, for language which is ambiguous. "English name of the country" does not necessarily mean, in the light of previous decisions, the name expressed in English words, since there are names which may be expressed differently in the United Kingdom than in the United States. This is clearly shown by the number of Treasury Department rulings where spelling, although acknowledged in foreign countries, is not recognized in the United States and is held insufficient for our marking requirements.

On page 3, line 6, insert the following after the word "marked," "provided that no article shall be held incapable of being marked if an article of the same class or kind is marked in any manner by manufacturers in the United States."

Experience has shown that a number of imported articles have been held to be incapable of being marked where their competitors in this market marked their products with trade names "Made in the U. S. A." and similar markings. Certain lines of glassware come within this category, the importers having contended that they were incapable of marking where their domestic competitors used a system of acid etching to identify their merchandise.

On page 3, delete lines 16, 17, and 18.

This provision gives to the Secretary the right to exempt from marking articles used by the importer and not intended for sale. This would include containers such as bottles which were imported to be filled by the importers and not intended for sale, thus removing the protection afforded by this section against domestic-made merchandise in foreign containers without notice to the consumer.

On page 3, under the same marking section, on line 19, we propose at the beginning of subsection (G) before the word "such" to insert the words "Upon proper proof and under bond if," so as to read: "(G) Upon proper proof and under bond if such article is to be processed * * *."

The reason for this change is that the classification of merchandise, the subject of this subdivision, is dependent upon use after importation. It has been the practice in customs legislation for a great many years that where a rate or amount of duty is contingent upon an act to be performed after importation, it is to be done either while the merchandise is in bond or while it is covered by a term bond after release from customs custody. We feel that the execution of a bond in this instance would occasion no inconvenience, would be of great protection to the revenue, and would be in line with previous legislation.

On page 4, line 9, delete the words "class or kind," and again at lines 13 and 14, same page, delete "in substantial quantities."

We feel that these two provisions are so uncertain that it renders this section open to the broadest interpretation with a possible defeat of the intent of the law. If, therefore, subdivision (J) is to be enacted into law, these two provisions should be deleted. However, it is our opinion that subdivision (J) is undesirable and has no place in the law since its only purport is to perpetuate rulings of the Department simply because they have existed for a certain period and were not reviewed by the proper tribunals. We, therefore, recommend that the whole of subdivision (J) be deleted.

On page 4, subdivision (B), at line 25, delete the first word "the" and substitute therefor the word "in," and, further, after the word "English", insert the words "words the."

This is to effect the same change as was suggested on page 2, lines 12 and 13.

On page 5, line 12, delete the words "or the article (or its," delete all of line 13 and the first two words on line 14. On line 15, delete also the words "or marking" and insert the word "or" following the word "exportation."

The reason for this change is that the present language would seem to provide for the marking of merchandise which had been delivered from customs custody

into the importers place of business to be marked there without the payment of the additional duty provided for in lines 19 and 20 on page 5. This would seem to offer an incentive to the importer to bring in merchandise not marked with the country of origin, to take his chance of being caught by the Government, and if he is caught, mark the merchandise, offer proof to the Government, and escape payment of the additional duty on the merchandise so delivered, with the maximum effect that he would pay the 10 percent provided by the law only on those packages which were certified to public stores for examination.

This is a departure from customs legislation as we know it, since no privilege has been extended to the importer after his merchandise leaves customs custody. In fact, with every entry is filed a redelivery bond to assure the Government proper duties or in lieu thereof liquidated damages to the value of the merchandise. By the terms of this proposed statute a greater privilege is given to the importer on merchandise which the Government has never inspected over that which is actually examined.

On page 6, line 3, insert the word "or" at the end of the line, and on line 4 delete the words "or marking."

This insertion and deletion is to effect a change similar to that suggested on page 5.

On page 9, line 8, substitute for the word "higher" the word "different."

We recognize that this section is legislation to legalize that which has been the practice of the Department for a number of years, namely, where there has existed a uniform practice, sanctioned by the customs authorities for a number of years, before a change of rate or classification is made by the Department, the Department will allow before placing the same in effect 30 days' notice after publication of such change. While we recognize the existence of this practice, it has been carried on, we may say, as a matter of executive leniency, but there has been no sanction of law. If it is to be made a part of our statute law, we can see no reason for a more favorable attitude toward the importer than toward the domestic interest. The reason offered for this period of leniency toward the importer is that the importer may have ordered from abroad merchandise against sales made in the United States, and a hardship would result if the rate of duty were increased before the merchandise was received.

The same argument will apply to the domestic interests with equal or greater effect. The domestic interest has met the competition of the importer on the basis of a known rate. He also has taken orders and met sales on the basis of his known competition. If, therefore, the duty to be paid by the importer is to be decreased, equal opportunity should be extended to the domestic interests to fill their orders before they meet the ruinous competition at the lower prices.

On page 17, line 9, insert after the word "protest" the following words, "or of an appeal to reappraisement." On line 13, following the word "section", insert the words "for appeals from a decision of the appraiser."

Under the existing law an appraisement may be declared void or invalid on either reappraisement or protest proceedings, and we feel that it does not matter what type of proceeding invalidates the appraisement, the Government should still have the right to proceed under the proposed amendment.

The provision as it now stands is meaningless from the standpoint of procedure since no appeal under existing law is provided from the judgment of the court leading to another appraisement or reappraisement where one is declared void as provided for in this section. Insertion of this clause would provide procedure whereby one might start the action contemplated by this amendment. In other words, section 501 now provides the manner in which an appeal may be taken from a decision of the appraiser. The proposed amendment contemplates this identical action where the court declares the appraisement void or invalid. By the addition of this clause it will be possible for the importer or the collector to appeal in the same manner and prosecute the appeal in the same manner as he does under the existing law, his appeal from the original decision of the appraiser.

On page 17, delete lines 14 to 25, inclusive; delete all of pages 18, 19, and 20, and the first 7 lines of page 21.

In our opinion the intent of this amendment to section 516 (b) is to repeal the right of the American manufacturer to a judicial determination of the proper rate of duty to be imposed upon imported merchandise. The same provision, 2 years ago, was incorporated in a customs brokers bill as section (b) and failed of passage, the Senate having refused to pass the said bill with that provision in it. We feel that if it is the intent of the proponents of this bill

to repeal section 516 (b) of the Tariff Act of 1930 it should be done in so many words.

In the testimony of the Government attorneys before the Ways and Means Committee it was stated that a comparatively small number of complaints had been filed since 1930 and gave the ultimate outcome of these complaints. Every time a domestic manufacturer calls to the attention of the Treasury Department a mistake in classification it is a potential 516 (b) case. Many of these cases, upon investigation by the Department, result in a reclassification at a higher rate. They do not fall within the designation by the Government attorneys of a "complaint", and hence are not included in the Government's tabulation. Had the domestic manufacturer not succeeded in having the Department increase the duty, in a large number of these cases a complaint would have been filed and prosecuted. Hence we feel that the effectiveness of section 516 (b) cannot be measured by the number of complaints or the litigation growing out of the same.

The proposed revised 516 (b) as distinguished from the present 516 (b) contemplates expensive litigation on the part of the domestic interests to determine the proper rate of duty to be effective upon importations made after the decision of the Customs Court or the Court of Customs and Patent Appeal. In other words, the domestic interest is to find himself hard-pressed by foreign competition, engaging in expensive litigation to a successful conclusion, only to find that his importing competitor has received sufficient merchandise to carry on unfair competition, possibly in stated lines for years to come, although he, the domestic interest, has been successful in the costly litigation. The present act provides that once litigation has been started by protest, all liquidations are suspended until a final decision of the court, which guarantees to the domestic manufacturer the protection to which he was entitled under the law, and to the Government, the revenue to which it was entitled. With these safeguards removed, as has been effectively done in the pages above enumerated, there will be no more remedy for American manufacturers. If this is the intent of Congress, we feel that it should be so expressed, since we feel that this is the effect of the proposed amendment.

At the hearing before the Ways and Means Committee we suggested that the court had construed section 516 (b) in such a technical way as to render ineffective the remedy provided. This construction should be corrected, and we submit a redraft of section 516 (b) for the consideration of the committee.

The language suggested would eliminate the present technicalities and afford the domestic producer the same right to litigate as the importer and under the same conditions. Under existing law, when an importer is dissatisfied with the rate or amount of duty assessed by the collector, all that need be done is to address a letter to the collector setting forth his claims, and that is termed a protest, invoking the provisions of section 514. The courts have held that the act contemplated no formality and no technicality. Under the wording of the present section 516 (b), the United States Customs Court has held that each of the provisions outlining the steps to be taken, such as requests for information as to classification, the reply by the Secretary, notice of dissatisfaction by the American producer, etc., are all conditions precedent to a valid protest filed under the terms of that section. The court has also construed very technically the language of the act setting forth each of these steps, and if any step is not literally complied with the protest is dismissed. In many instances a domestic producer has sufficient knowledge of an importation by an importer to at once file his protest, but regardless of this, he must write to the Secretary to determine how merchandise of this class is being classified, receive the Secretary's answer, file a complaint, and all the other steps contemplated by section 516 (b) before he may invoke the jurisdiction of the court. We can see no reason for this elaborate proceeding, for the same procedure set forth in section 514 would give to the collector and the Secretary the right to review the protest and satisfy the claims made therein, or forward it to the United States Customs Court as they now do an importer's protest. In other words, we feel that the language proposed in our suggested redraft of section 516 (b) would place within the hands of the domestic producer means of obtaining knowledge upon which to base a protest if he did not possess sufficient knowledge, but would remove the technicalities in the present law and make effective the remedy which Congress intended.

(*b*) *Classification.*—If requested by an American manufacturer, producer, or wholesaler, the Secretary of the Treasury shall furnish the classification of and the rate of duty, if any, imposed upon designated imported merchandise of a

class or kind manufactured, produced, or sold at wholesale by him. If a manufacturer, producer, or wholesaler objects to the rate of duty imposed, he may file a complaint with the Secretary of the Treasury, setting forth the reasons for his objection. Within 60 days from the filing of such complaint the Secretary of the Treasury shall render his decision. If the Secretary decides that the classification of or rate of duty assessed upon the merchandise is not correct, he shall notify collectors of customs as to the proper classification and rate of duty, and shall so inform such manufacturer, producer, or wholesaler, and such rate of duty shall be assessed upon all such merchandise imported or withdrawn from warehouse after 30 days after the date of such notice to the collectors. If the Secretary decides that the classification and rate of duty are correct, he shall so inform such manufacturer, producer, or wholesaler, and shall, under such regulations as he may prescribe, immediately cause publication to be made of his decision. If an American manufacturer, producer, or wholesaler is dissatisfied with the decision of the Secretary and is not possessed of the necessary information as to the entry, the consignee, and the port of entry of the imported merchandise in which he is interested, he may request the Secretary to furnish him the necessary information upon which to file a protest, and upon receipt of such request the Secretary shall furnish him with information as to the entries, the consignees, and the ports of entry, together with the dates of liquidation as will enable him to protest the classification of or the rate of duty imposed upon the merchandise the subject of the request.

Such manufacturer, producer, or wholesaler may file within 60 days after receipt of notice of liquidation by the Secretary or a collector of customs with the collector of the port where the imported merchandise was entered a protest in writing, setting forth a description of the merchandise and the classification and the rate of duty he believes proper, with the same effect as the protest of an importer, consignee, or agent, filed under the provisions of sections 514 and 515 of this act. Upon the filing of typical protests, the collector shall notify the Secretary of the Treasury, who shall order the suspension pending the final decision of the United States Customs Court of the liquidation, at all ports, of all unliquidated entries of such merchandise imported or withdrawn from warehouse after the expiration of the 30 days after the publication of the Secretary's decision. All entries of such merchandise so imported or withdrawn shall be liquidated, or, if already liquidated, shall, if necessary, be reliquidated, in conformity with such decision of the United States Customs Court. If, upon appeal to the Court of Customs and Patent Appeals, the decision of the United States Customs Court is reversed, the classification of the merchandise and the rate of duty imposed thereon shall be in accordance with the decision of the Court of Customs and Patent Appeals, and any necessary reliquidation shall be made. The provisions of this subdivision shall apply only in the case of complaints filed after the effective date of this act.

On page 23, delete lines 19 to 25, inclusive, and on page 24, lines 1 to 4, inclusive.

For a number of years, it has been settled law that all exactions made by the collector whether in the guise of duties, excise taxes, revenue, or any other name, if collected on importations by the collector of customs, for customs purposes, are duties, and subject to all of the requirements of regular duties paid on imported merchandise. We appreciate that this section would render far more arduous the recovery of excise taxes, etc., paid on imported merchandise by importers, since it would take them out of the customs tribunals and leave them to their remedy at law. We feel that if section 516 (b) is to be amended as proposed in this law, section 528 might well be enacted into the law. On the other hand, if the domestic interests are to retain their present remedy under section 516 (b), it will afford the only possibility of review for the Government against the erroneous assessment of excise taxes, internal-revenue taxes, etc., on imported merchandise. Obviously, the importer is not going to litigate the assessment of a tax which is too low. The collector who makes the assessment cannot start a proceeding against himself. The only certainty of the proper adjudication of the rate or amount of one of these taxes is through 516 (b), instituted by an American manufacturer. We submit, therefore, that if this provision is to be enacted into the law, it is an added reason for the present wording of the 516 (b).

THE AMERICAN TARIFF LEAGUE,
By J. G. LERCH.

LAMB and LERCH, *Counsel.*

STATEMENT OF JOSEPH F. LOCKETT—Continued

Mr. LOCKETT. Mr. Chairman, I would like to offer the amendment which I referred to in my testimony on January 25. In that testimony I stated that in that connection I was not appearing on behalf of the Institute of Carpet Manufacturers. You may recall my testimony. I realize this amendment is rather imperfect and it may have to be redrafted.

Senator WALSH. Yes, sir.

(The amendment referred to is as follows:)

On page 39, between lines 16 and 17, insert the following new section:

SEC. 32 (a). If any article imported prior to the effective date of this act (or its container) was not marked in accordance with the provisions of section 304 of the Tariff Act of 1930 (U. S. Code, 1934 ed., title 19, sec. 1304) and such article (or its container) was assessed an additional duty of 10 percent under said section 304 on account of such fact and such assessments were duly protested under section 514 of the Tariff Act of 1930 (U. S. Code, 1934 ed., title 19, sec. 1514) and such protests are pending before the United States Customs Court or the United States Court of Customs and Patent Appeals or if any such article (or its container) has become subject to an assessment under said section 304 the duties so paid or assessed or to be assessed shall be held not to have accrued and shall be refunded or remitted as the case may be if such article (or its container) was or is marked in accordance with said section 304 prior to its release from customs custody.

(b) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section.

On page 39, line 17, strike out "32" and insert "33."

Senator WALSH. Mr. Somerville.

STATEMENT OF H. P. SOMERVILLE, WASHINGTON, D. C., CHAIRMAN, LEGISLATIVE COMMITTEE, AMERICAN HOTEL ASSOCIATION

Senator WALSH. Your name is H. P. Somerville and you are chairman of the legislative committee, American Hotel Association?

Mr. SOMERVILLE. Yes, sir.

Senator WALSH. Where do you reside?

Mr. SOMERVILLE. The Willard Hotel, Washington.

Senator WALSH. You may proceed.

Mr. SOMERVILLE. I have just a short objection in reference to one particular section.

First, the American Hotel Association is the only national hotel organization. It is comprised of 53 State and regional associations, which in turn includes some 5,800 hotels. Our numerous border hotels have expressed a fear as to what effect section 31 of the bill might have upon their business. It can readily be seen that it would doubtless adversely affect them, not only directly affect the border hotels but, incidentally, affect hotels and other allied business all over the country. The law certainly would tend to curtail travel of tourists, the tourist business, and other business upon which hotels and businesses incidental to travel are dependent.

A feature that has a great stimulus to thousands of tourists planning trips along the Mexican or Canadian borders is the fact that they can go across the border not only to get a glimpse of those

countries but to send a few post cards and purchase a few curios or souvenirs, to be able to say that they have been in Canada and Mexico and substantiate the fact with articles purchased there.

A city such as El Paso, particularly its hotels, would feel materially the effect of this law. Mr. Paul Harvey of the Hotel Paso Del Norte, of that city, states that thousands of tourists each year stop off there just for the purpose of going over to Juarez, Mexico, not only to go to Old Mexico, but to purchase a few items to send or to bring to their friends or relatives at home.

With such a law they certainly would not stop there. They may plan their trip by a direct route, or, worse, not to make the trip at all, because those restrictions would eliminate one of the important features of the trip.

It seems there should be some other out that would cover the purposes of the Customs Bureau than is designed in this bill. Certainly we should not set up restrictions against our own people that Canada and Mexico do not exert against their people in coming to our country. There should be reciprocity.

One of the Senators sitting on the committee suggested—I do not believe seriously—that maybe the section might be changed to read as it is for borders above a certain latitude and something of different for borders below that latitude. That would take care of the situation on the Mexican border, but we should approach the matter nationally.

We are opposed to any law that is not necessary and which would tend to discourage travel. "See America First" seems to be becoming relegated to the past. The American Hotel Association, representing the hotels of the Nation, just cannot see that being done. We not only want American dollars spent in America, but we want to encourage foreign moneys to be spent here. A few dollars spent across the border by our tourists is most nominal compared with the dollars spent by them in our own country enroute to those border places.

It seems, perhaps, that the proper definition of a tourist under the law may be a solution, as far as we are concerned, and will protect the retail businesses of our own border communities. By that I mean that we might possibly make exceptions to, or limitations to a tourist, for instance. A person should be classified as a tourist for the exemption purposes only if he resided at a specific distance away from that border place, such as a 50-mile radius, otherwise he would not be entitled to the exemption. We do not know, Mr. Chairman, whether that woud help accomplish the desired result, but we know that your committee probably will find some solution for it, in order to do that. As it is set up now it will definitely hurt the travel business in those communities that have heretofore enjoyed the benefit of the across-the-border travel.

Senator WALSH. We are glad to have your testimony, Mr. Somerville. The subcommittee will stand adjourned subject to the call of the Chair.

(Following the adjournment of the subcommittee, the following letters, telegrams, and briefs were placed in the record at the request of Senator Walsh:)

SALT LAKE CITY, UTAH,
January 27, 1938.

Senator DAVID I. WALSH,
United States Senate:

The National Woolgrowers' Association strongly urges the adoption of proposed Guffey amendment to H. R. 8099. This merely corrects administration in tariff and if adopted will give felt hat manufacturers a duty which Congress intended they should have.

NATIONAL WOOLGROWERS' ASSOCIATION.

THE PICKERT COMPANY, INC.,
Milford, Mass., January 22, 1938.

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: We know that you are thoroughly familiar with the proposed amendment to H. R. 8099, which is now pending before the subcommittee of the Senate Finance Committee (in which the word "felt" was eliminated from paragraph 1115 (b) of the Tariff Act). We are very desirous of having this passed by the Commission due to the fact that it means everything to us.

We know your attitude toward industry in our State and it is a pleasure to write and ask you to intercede for us.

We are pleased to advise you that if we can get protection and prevent foreign bodies coming in here it means that this factory can operate positively 11 months a year—and you know what this means for labor. Paying the wages to our labor that we do—and for your information, we have a half dozen people earning between 30 cents and 40 cents an hour, and the balance of our people receive from $30 to $60 a week.

In conclusion, if we do not receive relief by a higher tariff it means ruination to our industry. We hope you will use your best efforts to help us in passing this amendment.

Assuring you of our appreciation for your efforts in our behalf, we are

Respectfully yours,

EDWIN S. PICKERT, *President.*

SUSQUEHANNA WOOLEN CO.,
New Cumberland, Pa., January 22, 1938.

Hon. DAVID I. WALSH, M. C.,
United States Senate, Washington, D. C.

DEAR SIR: Referring to the hearings of the Senate Finance Committee beginning January 25 on the "customs administrative bill," we respectfully urge your support in protection of our home industries by deleting the words "of blanketing" from paragraph 1111 of the Tariff Act of 1930 as provided for by the Committee on Ways and Means of the House in bill H. R. 8099.

Respectfully,

PAUL E. REIFF, *Treasurer.*

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA,
New York, N. Y., January 27, 1938.

Hon. PAT HARRISON,
Chairman of the Senate Finance Committee,
Washington, D. C.

MY DEAR SIR: On behalf of the National Association of Manufacturers I wish to express emphatic approval of the principles and purposes of H. R. 0738, introduced by Representative Doughton which seeks to amend certain administrative provisions of the Tariff Act of 1930 and for other purposes.

The principle embodied in the bill has been endorsed by our tariff committee after thorough study. However, the approval of this measure is subject to three following reservations which we respectfully submit for your consideration:

1. We are opposed to changes in section 304 of the 1930 act which would liberalize provisions regarding the marking of imported articles and containers

and which gives the Secretary of the Treasury broad discretionary powers. We believe that the relaxation of these provisions would work a serious injustice on American producers. It is submitted that the importer should be held responsible for the failure of foreign producers to mark goods according to the provisions of the law. The contemplated change which would allow the importer to mark goods after they have been imported, is a dangerous one. We can see no reason for a provision in the act which would permit the avoidance of the additional 10 percent ad valorem duty put in the act for failure to mark goods before importation. It is our belief that the effect of this amendment might be to encourage unscrupulous importers to endeavor to market unmarked merchandise brought into this country either openly or surreptitiously. If caught, the importer attempting to do this would have, simply enough, to mark the goods at a nominal expense, without penalty. The suggested change will immeasurably increase the work of the Bureau of Customs, if the Secretary of the Treasury establishes many exceptions. We suggest, therefore, that subsection (e) of section 3 of the Customs Administrative Act of 1937 be changed to provide that if imported articles and containers are not properly marked before importation, the importer should be subject to an additional 10 percent ad valorem penalty duty.

2. We also wish to suggest the deletion of paragraph J of subdivision 3 of subsection (a), of section 3, which allows the Secretary of the Treasury to authorize the exception of any article from the requirements of the marking provision, if that article has been imported in substantial quantities during the 5-year period immediately preceding January 1, 1937. We believe that there will always be considerable disagreement as to just what "substantial quantities" means, since these words are open to considerable differences of interpretation.

3. We do not believe that any change should be made in section 516 (b) of the Tariff Act of 1930; we believe that the proposed amendment would tend to destroy the effectiveness of any appeal or protest by American producers, since it wipes out the penalty of a successful protest on the part of American manufacturers and gives importers a distinct advantage.

We believe that the adoption of these suggested revisions to the pending Customs Administration Act of 1937 would considerably strengthen the measure since it would not only facilitate and expedite the importation of foreign goods into this country, but would also protect American industry from unfair practices which unscrupulous foreign manufacturers might take advantage of through technical loopholes having been left open to them.

We beg to remain,

Very truly yours,

CHARLES R. HOOK, *President.*

LAWRENCE & TUTTLE,
San Francisco, February 1, 1938.

The COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: Attached hereto will be found a number of suggestions relative to the pending bill on customs matters, H. R. 8099, as to which I bespeak the careful consideration of the committee.

These suggestions are based upon an experience of more than 40 years in customs law, with the Board of General Appraisers, now the United States Customs Court (1894-1909), later as an attorney in the office of the Assistant Attorney General in charge of customs litigation (1910-14), and more recently (1915-38), in private life, as a customs attorney at San Francisco and Los Angeles. None of the suggestions, I believe, conflict with anything in the Doughton bill.

I wish to add that that bill impresses me very favorably, and that in my opinion the Ways and Means Committee and the Treasury sponsors of the bill are to be commended for their efforts thus to suppress abuses, to facilitate customs administration, and to alleviate undue burdens upon importers. The purpose of the suggestions in attached appendix accords with the aims above mentioned, and will, I trust, have the approval of your committee.

Very respectfully,

FRANK L. LAWRENCE.

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APPENDIX

(1) *Section 503 (a)—Dutiable value.*—Section 503 (a) provides as to "imported merchandise subject to ad valorem rates of duty" that the basis for the assessment of duties "shall be the entered value or the final appraised value, *whichever is higher.*"

A result of this minimum-value clause is that duty is often assessed on a basis which is unfair because the entered value exceeds the value found by the appraiser, or by the court on reappraisement. It is submitted that when an appraiser, acting with all the wide investigative agencies of the customs service at his disposal, finds a value lower than entered value, there is no reason sounding in public policy why his finding should not be accepted for duty purposes, instead of the importer's higher entered value. And even more strongly may this be asserted as to instances where the lower value has been found by the Customs Court in a reappraisement appeal, in which proceedings have been conducted with usual judicial safeguards and with both sides represented by counsel.

Suggestion: Amend said section 503 so that it shall read as follows, amendments being indicated by canceled matter in black brackets.

"(a) *General rule.*—Except as provided in section 562 of this act (relating to withdrawal from manipulating warehouses) [and in subdivision (b) of this section], the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be the [entered value or] final appraised value, [whichever is higher]."

(2) *Section 503 (b)—Certificates of pending reappraisement.*—This section permits assessment at less than entered value, where the entrant certifies:

"That the entered value is higher than the value as defined in this act, and that the goods are so entered in order to meet advances by the appraiser in similar cases then pending on appeal to reappraisement."

In various respects this useful law is defective, and therefore to an important extent its just and beneficient provisions are not available to the importer.

(*a*) One of these defects arises out of the fact that these certificates may be used only "to meet advances by the appraiser"; that is, only in issues where the appeal is taken by the *importer* from the advance by the appraiser. If an issue arises on appeal by the *collector*, that is, where there has been no advance by the appraiser, certificates are not permissible. The importer is therefore without recourse, if he enters at the higher contested values, and that value is eventually held to be too high. On the other hand, if he enters at the lower value, in accordance with the finding of the appraiser previously made in regard to like merchandise, and if that value is eventually held to be too low, he is then penalized for undervaluation.

Suggestion: The defect referred to might be cured by amending the expression, "because of advances by the appraiser in similar cases then pending on appeal," so as to read, "because of similar cases then pending on appeal."

(*b*) A more important defect is one which is due not to the law as it reads literally, but to a restrictive interpretation which has been placed upon it administratively and judicially. The literal requirement is that the importer may certify "at the time of entry that he has entered the merchandise at a value higher than the value as defined in this act because of advances by the appraiser in similar cases then pending on appeal." This language is simple and unambiguous, and easily complied with. But the courts have added the requirements that the certificate shall set forth data relative to the "similar cases then pending on appeal;" that this information must be given at time of entry, and that, if supplied later, the certificate is fatally defective, even tho the collector has no use for the data until the time of liquidation long afterward. In other words, instead of construing the language of the statute as written, the courts have added to it.

Experience has shown many instances where, tho importers have been able to certify pendency of a "similar" case, they have not been able to identify it particularly, especially where it arose at a distant port. Also, in many cases the citation has been incorrectly given, thru inadvertence, erroneous information, or clerical error; and as a result duty has been assessed on the basis of a value higher than that which has been adjudged by the Customs Court to be the true value of the merchandise.

Suggestion: Amend the last part of said section 503 (b) somewhat as follows (matter canceled in black brackets) "and if [it shall appear that such action of the importer on entry was taken in good faith, and] the importer shall thereafter specify and show the pendency of a similar case as alleged in his certificate, the collector shall liquidate the entry in accordance with the final appraisement."

NOTE.—The requirement of "good faith" is canceled because unreasonable. If it appears that the true value of the merchandise is less than entered value, that fact by itself should justify assessment on true value. It must be remembered that, in order to enter his merchandise under a pendency certificate as permitted by section 503 (b), the importer is required to pay duty on the entered value, rather than the lower value which is contended for. As in any other line of business, this voluntary advance of a disputed amount is the acid test. No better evidence of good faith could fairly be desired.

(2) *Section 505—Liquidation prior to reappraisement.*—It has been held many times by the courts that liquidation of an entry, if made before the involved merchandise has been finally appraised or reappraised, is illegal and may be set aside. Generally speaking, it is desirable for liquidation to await ascertainment of all relevant facts, as prescribed in section 505, which reads in part as follows:

"Upon receipt of the appraiser's report and of the various reports of landing, weight, gauge, or measurement, the collector shall ascertain, fix, and liquidate the rate and amount of duties to be paid on such merchandise as provided by law. * * *"

However, in some reappraisement issues litigation is very protracted, so that liquidation is delayed unduly. For example, the litigation on the Japanese textile-tax issue continued for 10 or 12 years. This made it impossible for many thousands of silk entries to be liquidated during that period. Also, as a large proportion of the entries covered other classes of merchandise, it was not possible for importers to learn definitely the rates of duty which would be assessed and in case of dispute for them to file protests and have the questions settled in the Customs Court, because protests may not be filed until after liquidation of entries (sec. 514). Further, if the assessed rate of duty exceeded the entered rate, the further amount due the United States could not be collected prior to liquidation many years after importation. During that period some importers would go out of business or leave the country, and collection of the assessed duty would be hampered or precluded.

While the silk case just mentioned was extreme, there have been many instances where the reappraisement litigation has continued 5 or 6 years.

There seems to be no controlling reason why liquidation should always be delayed until reappraisement proceedings have terminated. A reliquidation can be made subsequently, in obedience to a judgment of the Customs Court in a reappraisement case, just as readily as though the judgment had been rendered in a protest case.

Suggestion: That it be provided that an entry may be liquidated pending reappraisement, if the collector shall regard it as desirable to do so, or if the importer shall so request. This amendment could well be attached to section 505.

(3) *Section 509—Customs Court—records in previous cases.*—It has lately been held by the Court of Customs and Patent Appeals, in *United States* v. *Bosca* (T. D. 49040, 25 C. C. P. A. —), that records in previous litigation may not be admitted in new cases, unless the parties are the same. The contrary rule of admitting such records according to the discretion of the court prevailed many years under the Board of General Appraisers, now the Customs Court, and the practice was convenient and in general satisfactory, and tended to uniformity of decision.

Where the subject matter of the litigation is the same, the fact that a different importer is involved is of less importance than in cases of general jurisdiction. While the Bosca decision above cited is doubtless in harmony with rules of evidence established for general jurisprudence, it is believed that the peculiarities of customs litigation, which are de re to an important extent, as well as in personam, justify an exception, but subject to the discretion of the court.

Section 509 provides that:

"Judges and divisions of the United States Customs Court may cite to appear before them or any of them and to examine under oath * * * any * * * person upon any matter or thing which they, or any of them, may deem material respecting any imported merchandise then under consideration * * *, in ascertaining the classification or amount of duty; * * * and may require such testimony to be reduced to writing, and when so taken it shall be filed and preserved, under such rules as the United States Customs Court may prescribe, and such evidence may be given consideration in subsequent proceedings relating to such merchandise."

Suggestion: That section 509 be amended by adding at the end some such clause as: "Regardless of whether the parties are the same."

(4) *Section 514—Amendment of protest in custom house.*—Often, if a protest made the right claim, it would be acted upon favorably by the collector; but, as the collector is not authorized to accept amendments, it becomes necessary for the protest to be certified to the Customs Court, where amendment may be made and proper reliquidation ordered. Such circuity and delay should not be required.

Suggestion: That section 514 may be amended by adding at the end:

"A protest may be amended at any time before it shall be transmitted to the United States Customs Court."

(5) *Section 514—Protest against collector's refusal to reliquidate.*—Frequently a change is made in tariff provisions which the importer regards as calling for a lower rate of duty than the one which was assessed upon liquidation, but inasmuch as 60 days have elapsed since liquidation no protest can be filed, should the collector deny the importer's contention. For instance, suppose that merchandise is entered in bond on February 1, 1934, and remains in bond until August 1, 1937, under the 3-year statute (sec. 557); that the entry is liquidated on July 1, 1934; that afterward a new tariff is enacted, or a treaty or trade agreement is negotiated, or the Tariff Commission "flexes" a rate downward; that this occurs more than 60 days after liquidation, and that there is disagreement between the collector and the importer as to whether the duty on the goods in bond has been reduced. The statute makes no provision for such a contingency.

It is hardly deniable that the importer should be given the right to protest against the collector's refusal to apply the lower rate of duty, and to have the controversy passed up to the Customs Court.

Suggestion: That section 514 be so amended as to give the importer the right to protest under the circumstances above stated.

(6) *Section 515—Protests—review by collector.*—This section provides:

"Upon the filing of such protest the collector shall *within 90 days* thereafter review his decision * * * *If* the collector shall, *upon such review, affirm* his original decision, * * * *then* the collector shall forthwith transmit the entry and the accompanying papers * * * to the United States Customs Court."

This obviously requires, as conditions precedent to transmission of a protest to court: (a) Review by collector within 90 days, and (b) affirmance of original decision. No provision is made for cases where the collector does not review within the 90 days, or where, upon review after 90 days, he does not affirm his original decision. The courts have broken this impasse by holding that, if the 90-day period expires without review, the protest shall be transmitted to the Customs Court, *even tho the collector stands ready to concede protestant's contention, and to refund the amount in dispute.*

This is unfortunate in result, and contrary to public policy, for it throws cases into court, when there is no dispute between the parties; and in time and attention of the court and of Government counsel are unnecessarily involved in perfunctory settlement of the matter. Court and counsel are provided to settle real controversies, and not to function in cases where the parties are in agreement, and an adjustment within the custom house may be made promptly and conveniently. It is axiomatic that only controversies should be adjudicated. When a case reaches the stage where it may be settled administratively, the judiciary should not be implicated, and the delays, formality, and complexity of judicial procedure should give way to more streamlined methods.

If the collector were permitted to refund upon a favorable review of the protest, regardless of when the review is made, a delay of 6 to 12 months would be saved in the particular case, in addition to making unnecessary such court proceedings as docketing, hearing, stipulation, opinion, and judgment. There are many instances where a collector cannot, and many more where he does not, act within 90 days. So it seems desirable that this defect in the statute should be corrected.

Suggestion: That the 90-day limitation be stricken out, and the matter be left to the direction of the Secretary of the Treasury, under he general authority of sections 502 and 624. This would accord with the law prior to 1922. Under the practice then prevailing no abuses developed, and inasmuch as the Secretary would have full authority, none need be anticipated.

(7) *Section 518—Amendment of protests.*—This section authorizes the Customs Court "in its discretion," to "permit the amendment of a protest, appeal, or application for review." The relevant court rule (No. 9 (2), T. D. 48593) requires the amendment to be filed "before the case is called for trial." This

time limitation seems to be in derogation of the statute. The corresponding provision in the Tariff Act of 1922 prescribed that amendments should be filed before the first docket call, and the action of the court in imposing a time limitation after Congress had repealed the one in the previous tariff is hardly in accord with the spirit of the amendment. Also, it is contrary to the practice prevailing in courts of general jurisdiction, where amendment is not only permitted to conform to proof *during trial*, but is even allowed on new trial after remand by an appellate court. The liberal practice prevailing in other courts should be followed in customs litigation.

Suggestion: That the discretionary clause in section 518 be amended to read: "in its discretion, at any time during trial," or, better still, "at any time prior to decision."

(8) *Section 518—Appraiser's reports as evidence.*—It has been held many times that appraiser's reports upon importer's protests, if made more than 90 days after filing of the protests, are admissible as evidence in the Customs Court only on consent. This rule has no apparent statutory sanction, as such reports are not mentioned in the law. Legal fictions generally are based upon considerations of justice and convenience, but the fiction that an appraiser's report is competent or not, according to its date, has no such sanction. The appraiser's oral testimony would be competent even 90 months after he had acted, and there seems to be no sound reason for thus discriminating in favor of his oral statements and against his written ones.

Suggestion: Section 518 or section 509 should be amended so as to permit official reports to be admitted in evidence in the discretion of the court. This would be somewhat analogous to the provision in section 501 for admission of reports, etc., in reappraisement cases.

(9) *Section 518—Modification of rules of evidence.*—Serious consideration is invited to the suggestion that all proceedings before the Customs Court should be conducted under a statutory modification of the rules of evidence similar to the one which has long prevailed in reappraisement trials in that court. In this regard section 501 provides:

"In finding such value affidavits and depositions of persons whose attendance cannot reasonably be had, price lists and catalogues, reports or depositions of consuls, customs agents, collectors, appraisers, assistant appraisers, examiners, and other officers of the Government may be admitted in evidence. Copies of official documents, when certified by an official duly authorized by the Secretary of the Treasury, may be admitted in evidence with the same force and effect as original documents."

This provision, tho revolutionary from the standpoint of general jurisprudence, has been used freely by both Government and importers, in reappraisement litigation, and very few objections, if any, have been made to this practice. Similar success might reasonably be expected to attend a like relaxation of the rules in regard to trial of protests.

Such evidence, the same as in reappraisement cases, would probably consist chiefly of documents from abroad. In protest cases it is now usual for litigants desiring testimony taken abroad to ask the customs court to issue a commission, generally to an American consul, to take a deposition. But some governments, notably those of Germany and Japan, object to such proceedings before the representative of a foreign country, and insist upon letters rogatory, under which the testimony is taken in the court of the particular country. This implicates diplomatic agencies of both countries, and requires translation of interrogatories and replies, as well as of incidental documents. All this is troublesome and expensive.

Suggestion: That section 518 be amended to conform substantially with the provision above quoted from section 501.

(10) *Section 518—Decision in protest cases by single judges of Customs Court.*—At present protests and petitions for remission of duties assessed for undervaluation are required to be passed upon by a division of three judges. Generally in Federal and State courts, where cases are tried without a jury, the case is heard and decided by a single judge, and this practice has not only prevailed a long time, but is expanding. The same practice in customs litigation would hasten settlement of issues, and save much time of the court.

Suggestion: That one of three possible amendments be made, as follows:

(*a*) That it be provided that hearing and the determination be made by a single judge.

(*b*) That, upon his own initiative or upon motion of either party, the single judge may have two other judges assigned to consideration of a case with him, and that upon the joint motion of both parties he shall do so.

(c) That the present system of assignment to a division of three judges be continued, unless waived by both parties, in which event a case would be assigned to a single judge for hearing and decision, or for decision, as the case may be.

Adoption of either of the last two of these suggestions would probably have the result that important or novel issues would be passed upon by three judges, and that unimportant cases and cases involving perfunctory action would be disposed of by a single judge. This would undoubtedly facilitate and expedite the business of the Customs Court, for the great majority of decisions by that court relate to cases which are being overruled or dismissed because concededly without merit, or to cases which concededly come favorably within the principle of test cases already completed.

(11) *Retroactive effect.*—While past revisions of customs laws have generally contained provisions for improved administration and for amelioration of burdensome features of preexisting law, Congress has made them subject to saving clauses whereby previous provisions were kept alive so far as previous importations were concerned. If a curative or remedial statute is regarded as advisable for future importations, it is urged that it is likewise advisable for previous importations, so far as entries, protests and so on, relative thereto may, at the time of the new enactment, be in an unfinished status, to which the new provisions may be readily applied. For instance, H. R. 8099 (sec. 304 (e), par. 5), remits the 10-percent surtax for failure to mark imported merchandise, provided that the merchandise is properly marked before release from customs custody. This is a highly desirable amendment of a statute which in many instances has worked very harshly, and the same reasons which make the amendment advisable for future entries also make it advisable for past entries as to which official action has not become final and conclusive.

Suggestion: That H. R. 8099 affirmatively declare that the provisions of the act shall be applicable to any customs entries as to which further proceedings have not been previously foreclosed by statutes of limitation.

(Whereupon, at the hour of 3:30 p. m., the subcommittee adjourned, subject to the call of the Chair.)

CUSTOMS ADMINISTRATIVE ACT

WEDNESDAY, FEBRUARY 9, 1938

United States Senate,
Subcommittee of the Committee on Finance,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in the Senate Finance Committee room, Senator David I. Walsh (chairman) presiding.

Senator Walsh. The committee will come to order.

STATEMENT OF HON. CARL HAYDEN, UNITED STATES SENATOR FROM THE STATE OF ARIZONA

Senator Walsh. Senator Hayden, you have an amendment to H. R. 8099 that you would like to discuss with the committee?

Senator Hayden. I would like to do so briefly, Mr. Chairman.

Senator Walsh. That amendment may be inserted in the record.

(The amendment referred to is as follows:)

Amendments intended to be proposed by Mr. Hayden to the bill (H. R. 8099) to amend certain administrative provisions of the Tariff Act of 1930, viz: On page 39, after line 16, insert a new section as follows:

"Sec. 32. Paragraph 741 of the Tariff Act of 1930 is hereby amended to read as follows:

"'Par. 741. Dates, fresh or dried, with pits, 1 cent per pound; with pits removed, 2 cents per pound; any of the foregoing in packages, or packed or assembled in units weighing not more than ten pounds each, 7½ cents per pound; prepared or preserved, not specially provided for, 35 per centum ad valorem.'"

On page 39, line 17, strike out the figures "32" and insert in lieu thereof the figures "33".

Senator Hayden. Mr. Chairman, I have been interested for many years in the development of date culture in the Southwest. We have a climate in Arizona and southern California quite similar to Mesopotamia, Egypt, and Algeria, where dates are produced. Dates were introduced into that region by the Department of Agriculture a number of years ago, and we have perfected the practice of growing and making really the finest dates in the world. Unfortunately, the American people do not have an appetite for dates in comparison to other countries. Our consumption in the United States is about one-half a pound per capita, whereas in Great Britain the consumption is about 2½ pounds per capita.

Our thought was that if dates could be put in packages which are attractive that more people would become accustomed to using them, and therefore the demand for dates in the United States would be increased.

We realized at the time the Tariff Act of 1930 was under consideration that we only produced around 8 to 10 million pounds of dates, whereas the American consumption was about 60 million pounds.

So, the proposal that I made there was that the existing small duty be retained on dates imported into the United States in bulk, that they were to be left exactly as they were, but if they were brought in packages a duty would be required. In other words, we are seeking to have the packaging done under sanitary conditions in the United States, because the packaged dates that were then imported were prepared in the oriental or near-eastern countries, where sanitation is not practiced as it is in the United States. For that reason a duty was imposed on dates in packages of 10 pounds or less, whereas the bulk date could be brought in without charge.

Now, the great distributors of dates in this country, like Dromedary and other people, bought these dates in bulk.

Senator CONNALLY. You mean they imported these dates in bulk from the foreign countries?

Senator HAYDEN. They imported these dates in bulk from the oriental countries. They put live steam on them, they brought them down on a long conveyor belt where girls with rubber gloves picked out the dates and arranged them properly in boxes. They are packed under sanitary supervision and we get a good date. That situation went along without any trouble and we built up the industry in this country of packaging the dates, and that increased the consumption of dates.

Everything was going along all right until, as will be explained in detail by those interested in the business, the importers devised a scheme to evade the law, and all this amendment of mine seeks to do is to restore exactly tthe conditions contemplated by the Congress and prevent this avoidance of the duty. It is done by making up the bunches of dates into about 2 pounds and then simply separating them by wax paper. It is not a package in the legal sense, and therefore they bring them in at the free rate without any duty at all, although they are divided into bunches of that kind.

I will ask Mr. Brand, or whoever is interested, representing the industry, to more fully explain the situation to the committee, but I want to impress upon you that we seek no change in the law whatever. We merely want the law carried out, and this Treasury decision which permits them to bring the dates in, separated in this shape, voided. I think the Treasury Department will concur in the amendment.

Senator WALSH. Mr. Brand.

STATEMENT OF VANCE BRAND, GENERAL COUNSEL, DATE INDUSTRIES ASSOCIATION, URBANA, OHIO

Senator WALSH. Your full name, Mr. Brand?

Mr. BRAND. Vance Brand, of Urbana, Ohio. I represent the Date Industies Association, Mr. Chairman, which is composed of date packers in the United States. This association comprises over 80 percent in volume of this business.

Our industry urges your favorable consideration of Senator Hayden's amendment, the adoption of which will benefit this industry,

and especially the labor employed in the industry, and all American consumers of dates.

I desire to give you, as briefly as possible, some of the background relative to the matter that you are considering. In 1930 Senator Hayden introduced an amendment to the tariff bill at that time being considered by the Senate, which amendment provided a rate 7½ cents on dates imported into this country in packages weighing, with the immediate container, not more than 10 pounds. The purpose of this amendment was to insure that the dates would be packed in small packages in the United States rather than abroad. Such purpose and intention was distinctly demonstrated in the debate conducted in the Senate under Senator Hayden's leadership on February 19, 1930, and in opening that debate Senator Hayden said:

> I am proposing that bulk dates shall be imported just as it is now done, but that they shall all be packed in the United States. That is all I ask. I am not attempting in any way to influence the price that the date packer shall pay for his dates.

An examination of the Congressional Record will disclose that many statements were made of the same import. I believe there is no question but that the Congress adopted this amendment for the sole purpose of insuring that all dates should be packed in small packages in the United States.

The law so enacted reads, in part—

> any of the foregoing in packages weighing with the immediate container not more than 10 pounds, each, 7½ cents per pound—

Now, on the bulk dates you have a rate of 1 cent if the pits remain and 2 cents if the pits are taken out. The pits are the seeds. The language employed seemed sufficient at the time and certainly was sufficient until a few months ago.

Within 2 years after the enactment of this provision the law was given somewhat of a test. In 1932 dates were imported in boxes, the contents of which consisted of many small packages or units of dates. Those units were the same as I have in my hand [indicating]. Each of these units were wrapped with two pieces of wax paper, one piece going around that way [indicating] and the other piece circling the ends.

Now at that time the Treasury officials, rather, the Customs officials in New York, determined that that was a package within the language of this present act, of the law as it is today. The wax paper was not sealed in any way. Inside was merely what I have in my hand, or very similar to it. In other words, the officials determined that the wax paper was the immediate container and not the wooden box.

The language of the law stood the test at that time, and 4 years passed before it was again tested. Many months ago, I understand, representatives of foreign date merchants submitted several drafts of proposed packing methods to the officials of the Bureau of Customs, and requested the rate of duty applicable under such proposed methods of packing. The outcome was the development of an ingenius method of packing. The usual container for bulk dates, namely, a large wooden box was used, the contents of which weigh about 72 pounds, with the dates divided as you see here [indicating]. There are 36 of these in that box. Now, they are uniform in size and uniform in weight. Those 36 units are separated by wax paper,

a piece of wax paper, or, rather, three pieces. These are in layers, nine to a layer, and three pieces running on top, and in between little pieces of wax paper like that [indicating]. It can be readily seen that when you remove one it leaves the other side open.

Under the language of the present act, in order to come within th package classification, according to the officials, there must be a package with an immediate container weighing not more than 10 pounds. These units weigh less than 10 pounds, so they qualify in that respect, but the Treasury Department has formally ruled that the wax paper is not the immediate container, but on the other hand, the wooden box is the immediate container. Therefore, dates packed in this manner are dutiable at the low rate, namely, 1 and 2 cents, rather than the duty applicable to packages of 7½ cents.

A method, therefore, has been devised to pack dates abroad and bring them into this country without paying the high rate of duty, and all the time a law remains upon our statutes, the purpose and intent of which was to insure that all the packing is to be done in the United States. The purpose and intent of the law has been avoided, but the Government has concluded that the letter of the law has not been broken.

Remember, that in 1932 a similar case arose wherein small units were packed in large wooden boxes—each unit contained by wax paper—and were determined to be packages within the meaning of the present language of the law. But now small units separated by wax paper, but in a different manner, are held not to be packages within the meaning of the language used in the act. The distinction can only be the manner in which the wax paper is used, and so long as the units are separated by some material, in either situation a package of dates is the result.

Because of the adhesive quality of dates—and in a 2-pound package there are about 120 individual dates—individual dates can be assembled into a package without the use of paper or any wrapping material, and the work of our industry is packing dates into small packages. Wrapping the dates, as you see them here [indicating], which is a package packed in the United States, all these that I hold in my hand are exactly the same packages, this [indicating] with the cellophane, and this [indicating] as it was before it was wrapped with the cellophane. As I say, wrapping the dates is a small or rather insignificant part of the job.

We take a large box of bulk dates weighing approximately 68 pounds; each date must be removed and handled separately, and this is accomplished mostly by female labor. After the dates are selected, and this is carefully done, these individual dates are then packed into 20 different-size packages, the largest of which is 2 pounds. Then the packages are wrapped with cellophane and other materials according to the plant doing the packing.

Senator Hayden has explained that we provide many sanitary precautions, the dates being processed by pasteurization and other methods, so that the consumer will receive a wholesome product.

One can clearly see from these packages before you that the real work is done in getting them into the form such as you see. The Treasury Department, however, has ruled that neither of these packages are packages under the present wording of the act, because

neither have an immediate container. Congress intended that both of these packages should be packed here in America and yet they are both before you, one packed in Ohio and the other in Iraq, thousands of miles from America's nearest coast.

Last year many thousands of boxes of this type of merchandise were imported into this country, none of which was classed as packages. We are informed that over 20,000 boxes entered on the Pacific coast and that one of the largest grocery chains on the Pacific coast took its requirements in this type of merchandise. That means almost a million and a half pounds entered on that coast. We are further informed that over 60 percent of the merchandise that entered on the Pacific coast was sold to the consumer just as you see it here in this form [indicating], without repacking or rewrapping. The retailer merely took it out of the box and handed it to the customer.

Other retailers used casual labor employed in the grocery to wrap these packages in a piece of cellophane, and these packages here demonstrate how they looked. Every one of these packages were purchased from a retail store in Portland.

Senator WALSH. What percentage of the consumption of dates is produced in this country?

Mr. BRAND. There are now about 10,000,000 pounds as against almost 70,000,000 pounds imported.

The American 2-pound package sells from 25 to 29 cents over the retail counter, while the packages packed abroad sell from 15 to 19 cents. Labor in the countries where such packing is done can be secured for around 25 cents per day. The girls working in our plant make more than that an hour. Such is the competitive situation with which we are faced, to say nothing of the additional costs necessitated by the sanitary precautions that we provide. Congress, in 1930, endeavored to provide so that might not happen. Only the language is faulty.

May we make it clear that we ask absolutely nothing but that Congress clarify a law so that it may be effectively administered so as to carry out the purpose for which Congress originally enacted the law.

We ask no change in the rate of duty. We make no mention of any alteration of any rates. We seek the deletion of four words in the present law and the substitution of six words.

I say to you gentlemen that by so clarifying the wording of the law the effect is not a raise in duty. The only result of such clarification is making effective a rate of duty or classification contemplated and established by Congress almost 8 years ago. I certainly want to say to you that had this law been administered as contemplated by Congress, and for the purpose and intention of its enactment, the United States Government would have received, undoubtedly, around $100,000 more last year than it did receive in duty on dates. But that does not at all mean that Senator Hayden's amendment proposes a higher rate of duty. Had Senator Hayden's original amendment, the present law, been effective last year, as was the intention of Congress, that sum of money would have been received by the Government and we would not be here today.

We earnestly submit that Senator Hayden's amendment proposes an administrative clarification of the present law and nothing else. This bill, H. R. 8099, which you are considering, proposes many

changes in the same tariff act—such changes brought about out of necessity. For the date provision, namely, section 741, to be administered as Congress intended, it likewise must be changed, and of necessity.

I have a supplemental statement that I would like to submit for the record.

Senator WALSH. You may submit the supplemental statement for the record.

(The supplemental statement of Mr. Vance Brand is as follows:)

SUPPLEMENTAL STATEMENT OF VANCE BRAND

Has the date industry availed itself of all remedies provided by law; and is the clarification of the law the only practical remedy?

It has been shown that the industry, through one of the important members, submitted the entire matter and all available information to the Secretary of the Treasury in accordance with the law so provided. After months of study the Secretary has formally ruled (September 25, 1937, T. D. 49166) that these units before you are not packages within the meaning of the language of the act. This decision is subject to judicial review in the courts and that is what is meant by the statement that a proper classification may be judicially determined if the American manufacturer proceeds in accordance with the requirements of the law. We are proceeding in that manner.

To some that might indicate that a remedy is afforded without asking Congress to clarify the present law. We submit to you that such a remedy within the immediate future is not available due to circumstances peculiarly existing in this matter. Naturally, this decision of the Treasury is a conscientious decision made after a careful study of the problem and on questions of this kind the Government decisions are seldom reversed. But more important, is there even a possibility that this decision may be reviewed by any court within a year or within any time which will be of benefit and afford a remedy, by reversal, which may avoid disastrous results for this industry and the people employed by it.

We must first understand that dates, unlike ordinary imports, are imported only during certain seasons of the year and the vast majority are brought into this country during the later part of September and the month of October. So many months of the year go by during which few, if any, dates are imported. Because of this situation the American packers carry heavy stocks of dates from one season to the next. Approximately 15,000,000 pounds of dates are held in cold storage warehouses under good conditions for future requirements because the dates are not accessible except during this one period of the year.

The Treasury decision was handed down on September 25, 1937, and under the law a 30-day waiting period had to elapse before any entry of dates could be protested. Under the law to get into court a protest must be filed. So during this 30-day waiting period all entries were free from protest. Therefore, the vast majority of dates were brought into this country this year at a time when we could do nothing about it. A few hundred boxes were imported subsequent to November 1 and we immediately filed a protest. This was done in Seattle, Wash., but, still, can we be assured that any judicial determination will be made as a result of this protest? The answer is "no." Under another section of the tariff act the consignee of this goods may request permission to repack the goods under Government supervision. By repacking we mean that they may take the wax paper out of the boxes and a transformation to bulk is the result. Our representative on the coast advises that such is the intention of the consignee. Thus you see that under this procedure, which is provided by law, these few hundred boxes may be transformed to bulk and there is nothing for any court to hear. We then have to wait until another entry is made. That will not be before next September.

It therefore may be a full year before we can even have a hearing in any court, and 2 years after that may elapse before an appellate court finally determines the matter. So if we must depend upon a court decision settling this matter, we contemplate a final decision sometime in 1941 or later, and that will be too late. Then if the Treasury decision is sustained we will then be just exactly where we are today.

Senator WALSH. I desire to submit for the record a communication I have received from Mr. Lucius Eastman, president, the Hills Brothers Co., New York City, in support of Senator Hayden's amendment.

THE HILLS BROS. CO.,
New York, N. Y., February 3, 1938.

Hon. DAVID I. WALSH,
United States Senate, Washington, D. C.

DEAR MR. WALSH: It is a good many years since the writer ceased to practice law in Boston, where, you may remember, he was associated with Choate, Hall & Stewart. During the last thirty-odd years I have been president of the Hills Bros. Co., large importers and domestic packers of foodstuffs. We are the largest packers of dates in America. We employ 500 to 1,000 people in our Brooklyn factory.

It has been called to our attention that Senator Hayden, of Arizona, has offered an amendment to H. R. 8099, and that this amendment, together with the bill, is now before the subcommittee of which you are chairman. There is no doubt in our mind that the tariff bill as now on the books was intended to prevent the packing of dates in small divisions or packages outside of this country and bringing them in here at the lower tariff. The proposed amendment clarifies the present law from an administrative point of view, and we would urge its adoption in the interests of American labor.

Faithfully yours,

LUCIUS R. EASTMAN.

Mr. SPINGARN, of the Treasury Department. Mr. Chairman, at this point we would like to place in the record the Treasury Department's report on Senator Hayden's proposed date amendment to the bill, together with a letter from the Secretary of State to the Acting Director of the Bureau of the Budget, expressing the views of the State Department on the same amendment.

(The letters referred to are as follows:)

FEBRUARY 11, 1938.

Hon. PAT HARRISON,
Chairman, Committee on Finance,
United States Senate.

DEAR MR. CHAIRMAN: Further reference is made to a letter received from the clerk, Committee on Finance, United States Senate, dated February 1, 1938, enclosing a copy of an amendment to H. R. 8099 intended to be proposed by Senator Hayden and requesting a statement of this Department's views on the proposed legislation.

The proposed legislation, if enacted into law, would amend paragraph 741 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 741) by deleting therefrom the words "in packages weighing with the immediate container not more than ten pounds each", and inserting in lieu thereof the words "in packages, or packed or assembled in units weighing not more than ten pounds each".

Paragraph 741 of the Tariff Act of 1930 reads as follows:

"Dates, fresh or dried, with pits, 1 cent per pound; with pits removed, 2 cents per pound; any of the foregoing in packages weighing with the immediate container not more than ten pounds each, 7½ cents per pound; prepared or preserved, not specially provided for, 35 per centum ad valorem."

It has been the practice to classify dates imported in large cases and packed in bricks or blocks of varying weights with flat sheets of waxed paper laid between the blocks under paragraph 741 of the Tariff Act of 1930 at the rate of 1 cent or 2 cents per pound, depending upon whether they are with or without pits. The Treasury Department has recently had before it the question of the classification of dates packed in brick-like units weighing less than 10 pounds. Several of these units are packed in one case with strips of waxed paper or other material separating the units in such manner that the units cannot be removed without removing or breaking one or more of the sheets of packing material. The Department held that dates so packed are not "in packages weighing with the immediate container not more than 10 pounds each." The Department's ruling in the matter was published as (1937) T. D. 49166 in connection with an

"American manufacturers'" protest proceeding instituted under the provisions of section 516 (b) of the Tariff Act of 1930 (U. S. C., title 19, sec. 1516). A copy of T. D. 49166 is enclosed for ready reference.

If it is intended that dates packed as above described should be assessed with duty at the rate of 7½ cents per pound, now provided in paragraph 741 of the Tariff Act of 1930 for dates "in packages weighing with the immediate container not more than ten pounds each," it is suggested that the words "packed in units of any description weighing (with the immediate container, if any) not more than ten pounds each" be substituted for the words "in packages, or packed or assembled in units weighing not more than ten pounds each" now appearing in the proposed amendment.

If the desired amendment is framed in the manner suggested, the Department does not believe that its enactment would result in any new administrative difficulties.

It is believed that the enactment of the proposed amendment will extend the application of the rate of 7½ cents per pound to dates packed in a manner not in use at the time of the enactment of paragraph 741 of the Tariff Act of 1930. The intent of Congress, as indicated in the Congressional Record of February 19, 1930, pages 4067 to 4075, inclusive, was to impose a rate of 7½ cents per pound on dates packed in small containers weighing with the contents 10 pounds or less so as to induce the packing of dates in the United States. The proposed amendment would extend the rate of 7½ cents per pound to dates imported in units of not more than 10 pounds each, whether or not in small containers.

In view of the administration's policy against increasing tariff barriers, the proposed legislation is not in accord with the program of the President.

Very truly yours,

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

(T. D. 49166)

Dates, fresh or dried

Dates, fresh or dried, packed in the manner described, dutiable at the rate of 1 cent per pound if with pits, or at the rate of 2 cents per pound if with pits removed, under paragraph 741, Tariff Act of 1930—Complaint of domestic producer under section 516 (b), Tariff Act of 1930

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D. C.

To Collectors of Customs:

Under date of September 10, 1937, Van Dyk & Reeves, Inc., 167 41st Street, Brooklyn, N. Y., domestic packers of imported dates, requested that they be advised under the provisions of section 516 (b) of the Tariff Act of 1930 (U. S. C. title 19, sec. 1516), as to the classification of and rate of duty assessed on dates, fresh or dried, imported in wooden boxes or other shipping containers, the contents of which weigh with such container more than ten pounds, and packed in the following manner:

Within each container above described are layers each weighing more than ten pounds, each layer being separated into individual units by single strips of paper or similar packing material so that the units so separated weigh not more than ten pounds each. Either the top or bottom of each layer is covered by a single sheet of paper or similar packing material, and the opposite surface of said layer is covered by smaller single sheets, each of which covers two or more single units. Some of the sides and ends of the layers and of the groups of the units which form each layer are covered either wholly or partly by the extension of the sheet or sheets covering the top or bottom of the layer, and others by a single sheet used as a lining for a whole side or end of the wooden box. No unit or group of units weighing not more than ten pounds per unit or group can be separated from the layer without removing or breaking one or more sheets of the packing material.

The Bureau in a letter dated September 24, 1937, advised Van Dyk & Reeves, Inc., that dates imported in the condition above described are assessed with duty at the rate of 1 cent per pound if imported with pits, or at the rate of 2 cents per pound if imported with pits removed, under the provisions of paragraph 741 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 741).

In a complaint filed in the Bureau against these classifications and rates of duty the domestic producers contend that such dates packed in the manner described are properly dutiable at the rate of 7½ cents per pound as dates, fresh or dried, with pits or with pits removed, in packages weighing with the immediate container not more than ten pounds each, under paragraph 741 of the Tariff Act of 1930.

In the opinion of the Bureau, dates packed in the manner described are not dates in packages weighing with the immediate container not more than ten pounds each, and the assessment of duty on such dates as dates, fresh or dried, with pits, at the rate of 1 cent per pound, or as dates, fresh or dried, with pits removed, at the rate of 2 cents per pound, under paragraph 741 of the Tariff Act of 1930, is hereby approved and should be continued.

In accordance with the provisions of section 516 (b) of the Tariff Act of 1930 notice is hereby given that the classification of and the rate of duty on merchandise of the character described imported or withdrawn from warehouse after the expiration of thirty days following the date of publication of this letter in the weekly TREASURY DECISIONS will be subject to the decision of the United States Customs Court in the event that a protest is filed under the provisions of that subsection.

(32-411Z.)

JAMES H. MOYLE,
Commissioner of Customs.

Approved September 25, 1937:
STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[Filed with the Division of Federal Register September 28, 1937, 3:59 p. m.]

FEBRUARY 10, 1938.

Hon. D. W. BELL,
Acting Director, Bureau of the Budget.

MY DEAR MR. BELL: I refer to Mr. F. J. Bailey's letter of February 10, 1938, transmitting a copy of a proposed report of the Secretary of the Treasury to the chairman, Senate Committee on Finance, on an amendment intended to be proposed by Senator Hayden to the bill H. R. 8099, and requesting an expression of my views with respect to the proposed legislation.

The effect of the amendment, if enacted into law, would be to increase the duties on certain dates, now dutiable at 1 cent per pound if with pits, or 2 cents per pound if with pits removed, to 7½ cents per pound. I do not comment upon the administrative practicability of the proposed amendment, or upon the suggestions made in this connection by the Treasury Department. These are matters falling within the jurisdiction of that Department and upon which it is most competent to judge.

With respect to the economic effects of the proposed amendment, however, I am in entire agreement with the conclusion of the Secretary of the Treasury that "in view of the administration's policy against increasing tariff barriers, the proposed legislation is not in accord with the program of the President." The increases in duty provided in Senator Hayden's amendment would be, as stated above, from 1 or 2 cents per pound to 7½ cents per pound. These are increases of 650 and 275 percent, respectively, in the rates of duty provided in the Tariff Act of 1930. Such substantial increases in rates of duty are directly contrary to the efforts which this Government is making on a broad front to reduce the barriers to international trade.

By far the larger part of our imports of dates is from Iraq. In 1936, for example, of total imports of 31.9 million pounds of dates with pits, 27.6 million pounds came from Iraq. Total imports of dates with pits removed [illegible] same year were 21.4 million pounds, of which 17.3 million pounds came from Iraq. In this connection, it is pertinent to note that this Government is engaged in negotiating a treaty of commerce with Iraq and that the proposed increases on a major product of that country could not fail to be highly embarrassing to the negotiations.

In accordance with Mr. Bailey's request, the enclosure to his letter is returned herewith.

Sincerely yours,

CORDELL HULL.

Senator WALSH. Senator Pepper.

STATEMENT OF HON. CLAUDE PEPPER, UNITED STATES SENATOR FROM THE STATE OF FLORIDA

Senator WALSH. Senator Pepper, we will be glad to hear you.

Senator PEPPER. Mr. Chairman and gentlemen of the committee, what I shall say and what my colleague, Senator Andrews, and Representative Peterson, of Florida, will say, is in behalf of an amendment offered by me to H. R. 8099, to amend certain administrative provisions of the Tariff Act of 1930.

(The amendment submitted by Senator Pepper is as follows:)

AMENDMENT intended to be proposed by Mr. Pepper to the bill (H. R. 8099) to amend certain administrative provisions of the Tariff Act of 1930, and for other purposes, viz:

On page 39, line 1, before the parenthesis, insert the words "and not more than fifty cigars."

Senator PEPPER. The gist of that amendment, Mr. Chairman, is this: The tariff act, of course, permits, for the personal use of the traveler, to bring into this country, duty free, $100 worth of merchandise. Now, the transit to Cuba, for instance, where you may buy what is the equivalent of a 15-cent cigar for 5 cents and come back to this country with it, has developed a merchandise in that sort of thing, the selling of cigars brought in that manner to other people, in conflict with cigar production in the United States and in conflict with cigar retailers in the United States.

What this amendment proposes is to limit the number of cigars that a person can bring in duty free from another country to 50 cigars, because it is considered that that is certainly all that a person should contemplate for his own personal use.

Senator WALSH. They are limited to $100 worth of imported articles.

Senator PEPPER. Surely.

Senator WALSH. And it may be that they are all cigars.

Senator PEPPER. That is right. Now, previously the customs agencies actually imposed a rule, which they thought they had authority to promulgate, that it must be limited to 50 cigars; but, since there was no express statutory authority for that, the courts have held that the customs authorities had no justification for the imposition of that rule, and consequently now they can bring in their whole amount of exemption in cigars.

Senator CONNALLY. How about the man smoking $100 worth of cigars? A man can smoke $100 worth of cigars before he got home. I have never been in Cuba, but I have always looked forward toward getting some Cuban cigars.

Senator PEPPER. I think, Mr. Chairman, generally speaking, that 50 cigars are indicated by the Customs Bureau as their idea about it, and we think that is reasonable. That is attested by the fact that I have a letter here from the general counsel of the Cigar Manufacturers Association of America, Inc. Of course, we are vitally interested in Tampa, Fla., as a great cigar-producing section, but that likewise is the sentiment of the cigar industry throughout the entire country.

Senator WALSH. That letter may go into the record:

(The letter referred to is as follows:)

CIGAR MANUFACTURERS ASSOCIATION OF AMERICA, INC.,
February 7, 1938.

Hon. CLAUDE PEPPER,
The United States Senate, Washington, D. C.

DEAR SIR: I have just been informed by our Washington representative, James P. McGovern, that you have introduced as an amendment to H. R. 8099 an amendment to section 1798 of the Tariff Act of 1930 to limit to 50 the number of cigars which may be imported free of duty under the personal-use exemption clause. I would like to say a word about the need for this legislation.

The Tariff Act of 1930, paragraph 1798, permits the importation, free of duty, of articles up to $100 in value acquired abroad and brought back by residents of the United States. As the language of the paragraph indicates, the purpose of this proviso is to permit citizens to enjoy freedom from tariff restrictions on articles which are acquired for their own personal use. This privilege is susceptible to great abuse, since the $100 limitation permits the importation of articles in a far greater number than practicable for personal use. In view of this circumstance, customs regulations were adopted limiting to 50 the number of cigars which might be brought in under this exemption. For similar reasons the regulations likewise limited to 1 wine gallon the amount of liquor which might be brought in under this exemption. Recently a court decision held that these limitations exceeded the scope of administrative regulations.

With respect to liquor the limitation on the exemption has been restored by enactment, in June 1936, of section 337 of the Liquor Tax Administrative Act, which amended paragraph 1798 of the Tariff Act of 1930 by inserting the limitation to 1 wine gallon of liquor.

The $100 limitation which is now applicable to cigars has been the subject of continuous abuse. Cigars, which command a price of approximately 15 cents in the United States, may be acquired in Cuba for the equivalent of 5 cents. The increasing popularity of cruises in the past few years has stimulated the practice of visiting Habana. This combination of circumstances has resulted in the importation, tax free, of substantial numbers of Habana cigars to the detriment of American manufacturers and dealers. It is obvious that the spirit and purpose of the personal-use exemption are frustrated in the case of cigars by the $100 allowance.

At the first session of the Seventy-fifth Congress, Congressman Peterson introduced H. R. 6791, to amend section 1798 of the Tariff Act of 1930 by limiting to 50 the number of cigars which may be brought in free of duty. The bill was referred to the House Ways and Means Committee, where it failed to receive attention because of the intensive activity which that committee has been devoting to tax matters. There is now pending the Senate H. R. 8099, which makes certain administrative amendments to the Tariff Act. It is appropriate that H. R. 8099, as pending in the Senate, be amended by adding to it the bill limiting to 50 the number of cigars which may be imported, duty free.

There can be no reasonable objection to this amendment. On the other hand, the harm which it causes has been recently evidenced by the flood of protests of retail dealers throughout the East concerning the cause of the privilege contained in section 1798 of the Tariff Act of 1930. Persons returning from vacation cruises have been bringing excessive quantities of Habana cigars, which, in many cases, have been sold to friends and acquaintances. The suggested amendment would terminate this obvious abuse and limit, to a reasonable basis, the privilege accorded by this section, 1798, of the Tariff Act of 1930.

If there is any additional information or data which you require, please do not hesitate to communicate with us.

Thanks for your cooperation.

Very truly yours,

SAMUEL BLUMBERG, *General Counsel.*

Senator PEPPER. Mr. Chairman, my colleague, Senator Andrews, would like to make a few remarks.

Senator ANDREWS. I believe I would like to follow Congressman Peterson.

Senator WALSH. Congressman Peterson.

STATEMENT OF HON. J. HARDIN PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Representative PETERSON. Mr. Chairman, and gentlemen of the committee: Senator Pepper has given you very clearly our problem. The problem is also taken care of with reference to liquors by an amendment previously in the Tariff Act which limited the amount of spirits, wines, and malt liquors to not exceed 1 wine gallon, and we are trying to do the same thing with the cigar industry that was done at that time.

We are confronted with this further problem at the present time, and I might say that this problem does not affect just Tampa, but all the manufacturers throughout the Nation. The matter has been endorsed by the National Cigar Manufacturers, as well as my own particular State.

I am also at liberty to state that the International Cigar Makers' Union, through their local representatives and their president, are in full accord with the bill, and you can readily appreciate this one instance in which both manufacturers and labor are in accord.

At the present time we have this rather acute situation: A person can go to Habana and bring back $100 worth of cigars, and the duty which he evades will more than pay his expenses to Habana. They have special rates from Miami to Habana of $27.50 round trip. I am not advertising Miami, it is not in my district, but you can readily see that now, with those short trips a person wishing to evade the law can easily take advantage of that. A similar low rate exists from Tampa.

I am not attempting to go into detail, but I had the Tariff Commission prepare for me a memo as to the effect of this. They estimate roughly that there is about $70,000 a year in tariff duty that is evaded in this manner. You can readily appreciate what that means. It would be increased, because as the rates and the opportunity increase, the number of cigars brought into this country would increase as well.

The Commissioner of Customs 2 years ago attempted to do by regulation what we are asking you to do by law, and in the report of the Tariff Commission there is this statement:

> Formerly the customs regulations allowed only 50 cigars or 300 cigarettes or 3 pounds of tobacco to be brought in duty free and tax free by returning residents of the United States. These limitations were removed, however, in conformity with a court decision. The effect of the adoption of the amendment proposed in H. R. 6791 would be again to limit to 50 the number of cigars which returning residents might bring in free of duty or tax.

This has the endorsement of the Cigar Manufacturers Association of America, which consists of 65 percent of the total volume and 75 percent of the number of cigar manufacturers in this country, as well as of the cigar makers in our own particular State.

I can give you in detail the record of distribution, I can give you the figures, but with the leave of the chairman, if I may, I have a short statement which has been prepared by the Tariff Commission, which I would like to insert in the record.

Senator WALSH. It may be inserted in the record.

(The statement referred to is as follows:)

UNITED STATES TARIFF COMMISSION,
Washington, May 13, 1937.

Memorandum concerning proposal to amend third proviso of paragraph 1798 of the Tariff Act of 1930, as amended (H. R. 6791).

Under the present law and customs regulations the only limitation on duty-free and tax-free cigars which may be brought in by returning residents of the United States is the general $100 exemption provided in paragraph 1798 of the Tariff Act of 1950. Former quantity limitations in the regulations were terminated by the decision of the United States Customs Court that the classes of articles admissible under the $100 exemption clause in that paragraph are not subject to restriction as to their admissibility through regulations promulgated by the Secretary of the Treasury. Copies of the regulations and decisions as they appeared in Treasury Declsions 46820, 47530, 47608, 47720, 48372, 48433, and 48940, are attached for ready reference.

Formerly the customs regulations allowed only 50 cigars or 300 cigarettes or 3 pounds of tobacco to be brought in duty free and tax free by returning residents of the United States. These limitations were removed, however, in conformity with a court decision. The effect of the adoption of the amendment proposed in H. R. 6791 would be again to limit to 50 the number of cigars which returning residents might bring in free of duty or tax.

The court decision which made necessary change in the former customs regulations also affected the imports of wines and liquors, thereby increasing the quantities which could be brought in by returning residents. Since then the Liquor Tax Administration Act, which was adopted June 26, 1936, has limited to an aggregate of 1 wine gallon the quantity of spirits, wines, and malt liquors which can be brought in free by returning residents. Since the passage of this act there has been considerable agitation to have similar restrictive legislation passed with respect to cigars.

IMPORTANCE TO DOMESTIC CIGAR INDUSTRY OF PROPOSED AMENDMENT

Statistics do not show the quantities of such articles brought in by passengers under paragraph 1798; therefore an estimate only can be made of the volume of imports which would be affected by the proposed amendment.

The number of passengers arriving from Cuba in the years 1933-34, 1934-35, and 1935-36 as recorded by the Bureau of Immigration is shown below:

Fiscal year	Aliens		Citizens		Total
	By water	By air	By water	By air	By water and air
1933-34	7,597	2,334	10,938	4,398	25,266
1934-35	8,884	3,006	17,238	7,316	36,476
1935-36	11,136	2,798	32,707	8,000	54,639

The above table separates aliens and citizens but not residents and nonresidents. Allowing for children as 10 percent of the total, it may be estimated that the residents of the United States were 40,000. If each of those passengers brought 50 cigars, the number might be estimated as 2,000,000 cigars. On a valuation of, say $100,000, the amount of duties and taxes which were foregone on this quantity of cigars is estimated to be $70,000. These figures may be compared with the duty-paid imports in the calendar year 1936 of 3,020,000 cigars, valued at $340,000.

Neither the cigars brought in by residents of the United States nor duty-paid imports of cigars constitute a significant part of the total consumption of cigars in the United States. In the calendar year 1936, 5,400,000,000 tax-paid cigars, imported and domestic, were consumed in the United States. The cigars imported from Cuba are most directly competitive with clear Habana cigars (cigars made wholly of Cuban tobacco) made in the United States—a small part of the total production.

The centers of the domestic clear Habana industry are Tampa, Fla., and Trenton, N. J. Therefore, those connected with the cigar industry in these

areas are the ones particularly interested in the tax and duty status of cigars brought in by returning residents. It is estimated by the cigar trade that the domestic production of clear Habana cigars is about 1 percent of the total production.

Representative PETERSON. It is rather an acute situation. It is growing. It is $70,000 now, which is a large amount, and we have a rather acute situation with reference to the cigar makers. They have been trained in that work. When you get away from the handmade cigars, then they are more or less a stranded population. It is an acute problem in Tampa, but they have the same problem somewhat in the other parts of the country.

Representative Mosier, from the State of Ohio, asked me to say that he was vitally interested in this, and there are a number of other Members that would appear this morning, but I want to shorten the record. Thank you very much. I sincerely trust that the amendment will be adopted by the committee.

Senator WALSH. Senator Andrews.

STATEMENT OF HON. CHARLES O. ANDREWS, UNITED STATES SENATOR FROM THE STATE OF FLORIDA

Senator ANDREWS. Mr. Chairman and members of the committee, I am very much in favor of the amendment offered by Senator Pepper to this bill. I think it is obvious that we should favor it.

There used to be 10,000 cigar makers in Tampa, and there are probably not over one-half of that number employed today. We have an acute labor situation. Many of those people do not know how to do anything else. We feel we are justified in not only asking for this amendment on their account but also because the present practice reduces the Federal revenue at least $70,000 a year.

As I understand it, there are about 54,000 people, usually tourists, who go back and forth from Cuba to the United States and each one can bring $100 worth of cigars, if they do not bring anything else. The result is that it has gotten to be almost a racket. They can bring cigars in this country duty free and they can undersell the people in this country if they want to sell, rather than keep them.

I have a statement that covers some of the features a little bit better, since I do not want to take up too much of the time of the committee.

Senator WALSH. That may go into the record. Thank you, Senator Andrews.

(The statement referred to is as follows:)

Prior to February 15, 1935, the Federal Government restricted the importation of cigars, free of duty, into this country to 50.

In 1935 the United States Custom Court said that such a restriction exceeded administrative authority. This decision allowed anyone returning to this country from Cuba (or abroad) to bring in up to $100 worth of cigars if they so desire.

In 1935 an amendment was introduced and passed which restricted the bringing in of liquor to 1 gallon. This amendment was the same as was in force prior to February 15, 1935. It is active today.

In other words, the proposed amendment is not asking for anything but the state of affairs that existed prior to 1935.

Cigars should be given the same consideration as liquor.

The adoption of this amendment will go a long way to protect American labor. It is a well-known fact that there are thousands of cigar makers now on relief,

and every boxful of cigars made by foreign labor takes just that much away from our own people.

If the American people have enough money to afford to take trips to foreign countries, cutting them down on a few cigars will not make very much difference to them individually; but, on the other hand, will be a definite step on the right road to help us relieve the unemployment problem and extend a helping hand to one of America's major industries, which is now suffering because of the fact that we have no restrictions on the amount of cigars that returning Americans may bring into our country.

Senator PEPPER. We certainly hope that we may have favorable consideration of this amendment.

Senator WALSH. All right, thank you.

Senator BONE. The subcommittee will be glad to hear you.

STATEMENT OF HON. HOMER T. BONE, UNITED STATES SENATOR FROM THE STATE OF WASHINGTON

Senator BONE. Mr. Chairman, I have a matter that can be submitted very briefly. It has to do with a provision in the Tariff Act of 1930, and so that the committee may have that matter before it I will leave a statement with the stenographer. The section that I refer to in the Tariff Act of 1930 has to do with the marking of imported articles. It provides how they shall be marked, "Made in Japan," and the like.

Now, in the West, and I think that is true all over the country, lumber is quite a competitive factor in trade.

Senator WALSH. We have had some testimony on that subject.

Senator BONE. I do not think it is necessary to go into it. The committee members understand that.

The act has for years required the stamping, branding, and labeling of imported articles. It provides that the Secretary of the Treasury may, by regulation prescribed hereinafter, except any article from this marking order. In other words, if he enters an order, which is in effect a regulation, then he can except that part of the order as to marking. But the Secretary has never made any exceptions which would be regulatory in nature, and therefore be a regulation, and lumber has come in unmarked. Of course, any practical human being would not want to mark individual toothpicks, or matches, and that sort of thing, and we realized that the same practical obstacles might be in the way of marking these other things unless the language be clarified so as to clearly exclude the little dinky things that never could be marked.

I asked Colonel Greeley, of the West Coast Lumber Men's Association, and Mr. Compton, of the National Lumber Manufacturers' Association, to suggest the wording, and yesterday Senator McNary and I joined in a little amendment. This amendment is only two or three lines, and it is as follows:

On page 4, line 17, add this proviso to subsection (J): "*Provided*, That this subsection shall not apply to sawed lumber and timbers, poles, and bundles of shingles, which articles shall be marked."

Now, they are large enough so that they can put a stamp on them.

Senator CONNALLY. That is the exception?

Senator BONE. That is the exception.

Senator CONNALLY. In other words, you cannot make that exception?

Senator BONE. That is right; they cannot except them. This subsection (J) says this—and I call you attention to the language:

> Such article was produced more than 20 years prior to its importation into the United States; or
>
> (J)—

and this is the one we object to unless it be amended—

> Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within 2 years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin.

Lumber has not been marked during this period. Now we are confronted with a great flood of Canadian lumber which is highly competitive.

Senator CONNALLY. Let me ask you there, what is the advantage of having them marked? Is it merely to know that they are imported?

Senator BONE. That is the essence of it.

Senator CONNALLY. It is just so that the purchaser will have an opportunity to say, "Well, I want American lumber."

Senator BONE. That is right. In other words, if he wants to put up his home, or to put up a pole line, or something that is made of this heavy lumber, he will know what he is getting. I do not think there is anything unfair in it.

I prepared a little statement, and rather than take the time of the committee I will leave it with you.

Senator WALSH. That may be put into the record.

Senator BONE. I will leave a copy of the statute as it is. I thank the committee very much.

(The statement of Senator Bone is as follows:)

Senator McNary and I yesterday introduced an amendment to H. R. 8099, the effect of which would be to provide for marking with the name of the originating country certain lumber and lumber products imported into the United States. The amendment is as follows:

On page 4, line 17, add this proviso to subsection (J):

> *Provided*, That this subsection shall not apply to sawed lumber and timbers, poles and bundles of shingles, which articles shall be marked.

This wording was prepared, at my request, by Col. W. B. Greeley, secretary-manager of the West Coast Lumbermen's Association and formerly United States Chief Forester, and by Wilson Compton, president of the National Lumber Manufacturers' Association.

Under section 304 of the Tariff Act of 1930 lumber should have been marked with the name of the originating country for many years, but the Treasury Department has not enforced the law. There is a provision in the Tariff Act that the Secretary of the Treasury can make exceptions to the provisions for marking, but this would have to be done by regulation and no such regulation has ever been issued.

The marking should now be required, first, because it is to the interest of domestic producers that foreign lumber be marked; second, because it is entirely practicable to mark the lumber; and third, because no injury will be done foreign producers, who in many cases now mark their lumber which goes into domestic channels.

Of my own knowledge I know that the marking of lumber, even down to very small pieces, is common practice by many important companies. I mention the Weyerhaeuser Timber Co. as an example. I am assured by lumbermen that there is no physical difficulty involved.

I should like to correct certain statements that have been made by those who are unfamiliar with lumber. One of these is that a large proportion of the lumber imported into the country is rough and has to be planed in the United States, and that it is difficult to mark it and the marking would be useless because of the planing. I am assured by Henry Bahr, of the National Lumber Manufacturers' Association that these statements do not coincide with the statistical facts and practical experience. Since January 1937 statistics of rough and dressed soft lumber imports have been separately reported by the Department of Commerce. In the first 11 months of 1937, softwood lumber imports totaled 551,349,000 board-feet, according to these reports. Of this total only 149,716,000 board-feet, or 27.2 percent, were rough lumber.

I believe there is no question that lumber imported from Canada and other nations can be marked and that the cost of marking will be negligible. The Treasury Department places this cost at 20 cents to 50 cents a thousand board-feet, but I have no check against this at the moment.

The point is raised that the cost of this lumber marking would have the effect of increasing the tariff on imported lumber. I believe that is far-fetched since certainly this country has a right to regulate the marking of imported products, and has exercised that right without challenge. Naturally the exporters of the lumber will object, since it may result in a decrease in the use of their product in this country due to the fact that our people ordinarily prefer a domestically produced article.

If the Treasury Department is opposed to the particular language given in the amendment proposed by Senator McNary and myself, I hope the Department will propose alternative language to accomplish the same result. If no such alternative language is suggested, then Senator McNary and I shall press for the adoption of this language. If such a proviso is not adopted, we shall have to object to the inclusion of subsection (J), since this would serve definitely to prevent marking of imported lumber henceforth. We have no objection to subsection (J) with the proviso, but will object to this subsection without the proviso. I fell sure that a number of Senators from States having lumber interests will join in this objection.

It is my understanding that the Treasury Department wants subsection (J) retained, and I hope that the Treasury will cooperate in the enactment of a proviso that will be acceptable to the lumber interests.

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA IN FORCE JANUARY 3, 1935

1304. MARKING OF IMPORTED ARTICLES—(a) MANNER OF MARKING.—Every article imported into the United States, and its immediate container and the package in which such article is imported, shall be marked, stamped, branded, or labeled, in legible English words, in a conspicuous place, in such manner

as to indicate the country of origin of such article, in accordance with such regulations as the Secretary of the Treasury may prescribe. Such marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit. The Secretary of the Treasury may, by regulation, prescribed hereunder, except any article from the requirement of marking, stamping, branding, or labeling if he is satisfied that such article is incapable of being marked, stamped, branded, or labeled or cannot be marked, stampel, branded, or labeled without injury, or except at an expense economically prohibitive of the importation, or that the marking, stamping, branding, or labeling of the immediate container of such article will reasonably indicate the country or origin of such article.

Mr. SPINGARN, of the Treasury Department. Mr. Chairman, we wish to submit at this time for insertion in the record the Treasury Department's report on the proposed lumber-marking amendment introduced by Senator McNary on January 28. Our report was sent to the State Department by the Bureau of the Budget and the views of that Department on the proposed amendment are contained in a letter to the Acting Director of the Budget, which we also submit at this time for the record. The Acting Director of the Bureau of the Budget has advised both the State Department and the Treasury Department that there would be no objection to the presentation to the committee of the views expressed in these two letters relative to the proposed amendment provided that no commitment be made thereby in either case as to the relation of the proposed amendment to the program of the President.

(The letters referred to are as follows:)

TREASURY DEPARTMENT,
Washington, February 9, 1938.

Hon. PAT HARRISON,
Chairman, Committee on Finance, United States Senate,
Wasahington, D. C.

DEAR MR. CHAIRMAN: I have the request dated January 29, 1938, from the clerk of your committee for a report upon an amendment intended to be proposed by Senator McNary, of Oregon, to H. R. 8099, the customs administrative bill.

Section 3 of H. R. 8099 is designed to amend section 304 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1304), which requires imported articles to be marked to indicate the country of their origin. Subsection (a) (3) (J) of the amended section 304 would authorize the Secretary of the Treasury by regulation to except an article from the marking requirements if such article is of a class or kind which was imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, without being required to be marked to indicate its origin. Senator McNary's amendment would provide that this subsection shall not apply with respect to lumber or with respect to timber products.

The term "timber products" is one of doubtful application. The Treasury Department has been informally advised that advocates of the proposed amendment are interested in having the marking requirements applied to lumber, timbers, railroad ties, and telephone, trolley, electric light, and telegraph poles of wood. If the amendment were modified to add after the period at the end of line 17, page 4, of H. R. 8099 a new sentence reading: "This subdivision (J) shall not apply with respect to lumber, timbers, railroad ties, or telephone, trolley, electric light, or telegraph poles of wood," the Treasury Department does not believe that it would give rise to any administrative difficulty. If articles not included in the above enumeration are contemplated by the term "timber products" in Senator McNary's proposed amendment, they might be specifically mentioned or described in the alternative provision above suggested.

As lumber has been the subject of a trade agreement with Canada (49 Stat. pt. II, Proclamations, 418, 436, 440), and as a change in a long-established practice of admitting imported lumber without requiring that it be marked to

indicate its origin might operate as a trade barrier, Senator McNary's proposed amendment may be of interest to the Department of State.

Very truly yours,

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

FEBRUARY 9, 1938.

Hon. DANIEL W. BELL,
Acting Director, Bureau of the Budget.

MY DEAR MR. BELL: Reference is made to a letter from Mr. F. J. Bailey, under date of February 7, 1938, enclosing a copy of a proposed report of the Secretary of the Treasury to the chairman of the Senate Committee on Finance upon an amendment intended to be proposed by Senator McNary of Oregon, to a bill (H. R. 8099) to amend certain administrative provisions of the Tariff Act of 1930, and requesting this Department's comment upon the proposed legislation.

The amendment in question would exclude lumber and timber products from the purview of subsection (a) (3) (J) of section 304 of the Tariff Act as it would be amended by H. R. 8099 and in so doing would make nonapplicable to these products the provision in that bill authorizing the Secretary of the Treasury, by regulation, to except an article from the marking requirements if such article is of a class or kind which was imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, without being required to be marked to indicate its origin.

The present trade agreement with Canada, which went into effect on January 1, 1936, provides that the United States tariff treatment of lumber and certain timber products as set forth in that agreement shall not be made less favorable to Canada during the life of the agreement. Closely allied to tariff treatment is the question of the marking of origin of an imported product. In the past it has not been the practice of the United States Government to require that the country of origin be marked on individual pieces of lumber, the Treasury Department having considered that the Tariff Act of 1930 warrants the making of an exception, in the case of lumber, to the general rule of marking of origin. While this treatment of lumber cannot be said technically to constitute part of our tariff treatment of lumber, and its continuance consequently cannot be considered technically as having been bound to Canada in the trade agreement, the imposition at the present time on Canadian lumber of a marking-of-origin requirement would place an additional burden on the export of Canadian lumber to the United States and would be inconsistent with the spirit and purpose of the agreement. The raising of such an issue would be peculiarly unfortunate at the present time when the United States, through the new trade agreement with Canada, now under active consideration, hopes to obtain comprehensive concessions from Canada and thereby to bring about a further substantial expansion of American exports to Canada.

The Department, therefore, believes that the adoption of any provision such as that embodied in Senator McNary's proposed amendment, which would tend to place an additional burden on exports of lumber from Canada to the United States, would be highly undesirable.

Sincerely yours,

CORDELL HULL.

Mr. SPINGARN. Mr. Chairman, on February 8 Senator McNary introduced for himself and Senator Bone another proposed lumber-marking amendment which we understand is a substitute for the proposed amendment I have just referred to. We now have the Treasury Department's report on this later proposed amendment, and, with your approval, I will insert it in the record at this point.

(The letter referred to is as follows:)

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

DEAR MR. CHAIRMAN: I refer to the letter from your committee dated February 9, 1938, enclosing for report a copy of an amendment intended to be pro-

posed by Senator McNary, of Oregon, for himself and Senator Bone, to H. R. 8099, the customs administrative bill.

This amendment appears to be a substitute for the amendment reported upon by this Department in its letter addressed to you on February 9, 1938. It is the understanding of the Department that it is intended to prevent the articles enumerated in the new amendment from being excepted from the requirement that they be marked to indicate their origin if the exception is to be based upon a past practice of admitting such articles without requiring such marking. The language of the proposed amendment, however, would apparently go further than this and would require the enumerated articles to be marked under circumstances in which the marking would serve no purpose to indicate the origin of the articles to the ultimate consumer. The amendment would apparently serve its purpose if the last phrase, "which articles shall be marked," were deleted.

It is further suggested that for purposes of clarification "subdivision (J)" should be substituted for "subsection" in line 3 of the proposed amendment, and that there be substituted for the word "poles," in line 4, a more specific description of the articles intended to be comprehended by that word. It is the understanding of this Department that "telephone, trolley, electric-light, or telegraph poles of wood" would be appropriate language for this substitution.

Very truly yours,

STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

Senator WALSH. Representative McSweeney.

STATEMENT OF HON. JOHN McSWEENEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Senator WALSH. The committee will be pleased to hear you.

Representative McSWEENEY. I wish to refer again to the date question. It is quite an important industry in our home State of Ohio. Mr. Brand and the others have presented the facts concerning it. I would like to just add that I am deeply interested in making the tariff effective in order to provide this extra labor for the people in this industry. If there is any justification for the tariff it is to take care of the people who work in certain industries. This present interpretation of the law denies us two things: It denies us the sanitary protection that I think we should have in an importation of this kind, and it also denies the right to these people to find employment.

These Senators have explained the condition in Tampa relative to the cigar business. This also applies to us. These people have grown up in this work and have been able to do it efficiently. They put these dates in a very attractive package, which is not only convenient but very sanitary.

Under the present interpretation of the Treasury Department this work will practically be discontinued.

Not wishing to take any more of your time, I do ask respectfully that you consider this matter. We appreciate your taking it up at this time, because it seems to be a halt in your general program, but it means so much to us that we feel the delay of another session would be very serious. We deeply appreciate your interest.

I have my statement written out which I would like to submit to the committee.

Senator WALSH. It may be inserted in the record.

(The statement of Representative McSweeney is as follows:)

I am pleased to appear before you in support of Senator Hayden's amendment and thank you for the opportunity to do so. It affects between two and three hundred gainfully employed workers in my

State and a company which does over a million dollars' worth of business a year. Of most importance it likewise affects several thousand workers in the United States and some 35 plants which have several millions of dollars invested in plants and equipment. These workers and plants comprise the date industry in this country which packs dates in small packages.

In 1930 Senator Hayden proposed an amendment to the tariff act, which amendment was adopted, the sole purpose of which was to insure that the business of packing dates would be done in the United States, rather than in foreign countries, under favorable sanitary conditions and so that the American people, as consumers, can get the best quality of this fine variety of food.

Such was the purpose of the amendment and I believe there is no question on that point.

For 6 years this provision of the law was effective. But certain foreign date merchants, so I am advised, within recent months submitted some 11 drafts of proposed packing methods to the Bureau of Customs and asked the rate of duty applicable. Was it to be the low 1-cent rate of duty applicable on what is known in the trade as bulk dates, or the prohibitive rate of 7½ cents per pound applicable to packages. They had ingeniously discovered a method of packing by which they could bring into this country thirty-six 2-pound units of dates, uniform in size and weight, and separated by various strips of wax paper between all 36 units confined within a large box.

Each 2-pound unit is so completely contained in wax paper that no two units touch each other without the intervention of wax paper. Under the present wording of the law, in order for the 7½-cent rate to apply, dates must be in packages which with the immediate container weigh not more than 10 pounds. The question arose: Was the wooden box the immediate container, or the pieces of wax paper which surround these 2-pound units on all sides? If the wax paper is interpreted to be the immediate container we have 36 packages within the wooden box, each of which weighs less than 10 pounds. On the other hand, if the wooden box is the container, rather than the wax paper, the contents are taken as a whole and weighing more than 10 pounds are not in packages weighing less than 10 pounds.

The Treasury Department ruled that the wooden box under the wording of the act must be held to the immediate container rather than the wax paper and therefore the contents of that box, namely 36 individual and separate 2-pound units, were admissible at 1 cent a pound instead of 7½ cents a pound.

What is the effect? In order to pack dates into a package each date must be handled individually and this is a laborious job and can only be done by hand labor. Machinery cannot be used. In a 2-pound package of dates there are over 120 individual dates and each of these dates must be handled separately, made into a package, and later the package is wrapped with cellophane, but most of the workers engaged in this industry in this country do nothing but pack the dates in the packages. Thus, you see the business of packing dates is actually the business of packing several of these dates into a package and because of the adhesive qualities of the dates they stick together forming a compact package and the mere wrapping of a piece of paper or other material around the dates is not packing the dates.

It can readily be seen if the foreign-date merchants can use the cheap foreign labor in packing the dates into 2-pound units, and separate the units by wax paper, the job of packing has already been done before they enter this country.

From a commercial standpoint I am informed, after a very careful investigation, that last year over 60 percent of the dates that entered this country in this form—and they entered this country at the low rate of duty rather than at the high rate applicable for packages, because the law failed to cover such a situation—were sold direct to the consumers without any change in form of any kind and the balance were sold after a piece of cellophane had been wrapped around the unit or package. Clerks in grocery stores merely took the 2-pound package and wrapped a piece of cellophane around it, and the business which this industry does was effectively completed by this substitute method and all the time a law remained upon our statutes, the sole purpose of which was to insure that this packing would be done by this industry rather than abroad.

I am reliably informed that last year over 20,000 boxes of this class of dates entered this country at the low rate, that is 720,000 packages. The difference in revenue to the Government amounts to over $100,000 and this is a small quantity compared to the normal imports of dates into this country which amount to about 75,000,000 pounds a year. In other words the entry of this small quantity was a trial balloon but the purpose has been accomplished.

In order to correct the situation the present act must be amended by adding thereto six words and deleting therefrom four words. By such an amendment the law will be clarified and the purpose will be effectuated.

We ask that no change be made in the rates at all. It has taken 7 years for some ingenious people to think up a method to get package dates into this country at the low rate of duty. They tried before, back in 1932, but were unsuccessful because at that time they wrapped two pieces of paper completely around a single unit. The customs officials held that those two pieces of paper were immediate containers and therefore it was a package with an immediate container. But now they put these pieces of paper in this big box so that no single 2-pound unit is completely wrapped. When you begin to remove the 2-pound units from the box the paper naturally sticks to the dates because of their adhesive quality but some of the pieces of paper are thereby separated, leaving an open end or an open side. To me the distinction between the method of wrapping a package of dates in 1932 and now is quite technical but such a distinction has been made.

In conclusion may I say that in 1930 Congress after carefully studying the problem endeavored to insure that packing of dates would be done in this country. But the wording of the act failed to cover the situation we are now faced with. The protection which we endeavored to afford then is absolutely necessary now. I feel it is imperative to correct the situation, and I am confident that the language proposed by Senator Hayden in his amendment will make it possible for the Treasury Department to administer the act in accordance with the purpose for which the act was enacted, namely, to assure that the date packing will be done in the United States rather than abroad.

This industry and its employees are jeopardized. We earnestly take months of time and appropriate millions of dollars for the purpose of giving employment to our people. Can we not hesitate for a moment to help those who are gainfully employed keep their jobs.

I have conferred with the highest administrative authority, the Honorable Stephen B. Gibbons, Assistant Secretary of the Treasury, concerning this matter and he has advised me that the purpose for which the original amendment was enacted by Congress cannot be accomplished under the present wording of the act and that in order to accomplish the same a change must be made in the wording of the act.

Senator WALSH. The next witness is Mr. Barnes.

STATEMENT OF ALBERT MacC. BARNES, NEW YORK CITY, PRESIDENT, ASSOCIATION OF THE CUSTOMS BAR

Senator WALSH. Your name is Albert MacC. Barnes and you reside in New York City?

Mr. BARNES. Yes, sir.

Senator WALSH. You are president of the Association of the Customs Bar?

Mr. BARNES. Yes, sir.

Senator WALSH. What section of this bill do you wish to discuss?

Mr. BARNES. If the committee please, I have been requested by the Association of the Customs Bar to review this bill with the committee, and I will probably have to take more than the allotted 10 minutes because there are many sections on which we want to offer suggestions.

Senator WALSH. I understand.

Mr. BARNES. The Customs Bar has given quite some study to this bill. The matters which I wish to discuss with the committee are those things which the board of directors of the association believe are of such general interest, or of such technical character, or that affect the bar or the customs court, as should be called to the committee's attention prior to the approval of this bill in the form that it comes from the House.

Referring, first, to the provision on marking, section 3 of this act at line 15, the phraseology is "determine." That is—

> the Secretary of the Treasury may by regulations "(1) determine the character or words and phrases or abbreviations thereof which shall be acceptable."

And so forth.

We feel that that is giving to the Secretary of the Treasury a nonreviewable discretionary power, such as the Secretary has under the Antidumping Act in the case of a finding as to whether an American industry has been injured.

We doubt whether it was the intention of the proponent of this bill to exclude these determinations of the Secretary from any judicial review. Consequently we suggest that in line 17 there be inserted after the word "prescribe" the word "any reasonable" and strike out the word "the".

In line 19 insert after the word "other" the word "reasonable".

In line 20 strike out "whatsoever" and insert after the word "and" the words "a reasonable conspicuous", and later in the same line strike out the word "the".

We believe that these additions will subject the Treasury determination to judicial review, and we believe that is a healthy condition to have continue. It exists in the present law.

Senator CONNALLY. Of course that would increase litigation, would it not?

Mr. BARNES. No; I do not believe it would increase litigation, but it would prevent a nonreviewable determination by the Secretary of the Treasury, that is, the exercise of a discretion which cannot be attacked, and this act contains under that section 3 quite a broadening of the existing Treasury powers in the matter of marking.

Senator CONNALLY. Whenever you use the word "reasonable" in legislation does not that invite litigation?

Mr. BARNES. Yes; it invites controversy in a sense. On the other hand, it is conceivable that the Treasury may say that iron bars, or that each iron bar used in reinforcing work must be marked with the country of origin. The iron bar goes into the concrete and it is never seen or heard of after that. The marking of a package, as has been contended, the marking of a bundle of those rods would be sufficient marking for the wholesale trade.

On the other side of the question there is the matter of the marking of watches that come into the country marked with the word "Swiss," so that by subsequent encasement the word "Swiss" is entirely obliterated.

Now, a provision for reasonably conspicuous marking we believe would cause the Secretary of the Treasury to say it must be done in the case where no possible subsequent attachment can obscure it. Those are two examples that come to my mind at the moment.

Section 7 on page 10 of the draft of the bill, the insertion of the words "home consumption" in section 402 of the act of 1930. We are informed that the Treasury's reason for suggesting the insertion of the words "for home consumption" after the word "freely offered for sale" in section 402, subsection 3, was the difficulty encountered by the Government in obtaining proof abroad, or in checking the proof offered by importers in transactions offered for export in that country to countries other than the United States as evidence of foreign value. In a conference which some of us had with the Treasury we agreed that if such requirement embarrassed the Government we would withdraw any opposition to its suggestion. However, upon additional study of the question we are convinced that the insertion of these words will cause both the customs appraiser and the entering and litigating importer great difficulty, because of the necessity to segregate from the transactions in the foreign market those commodities that are actually used for home consumption.

Now, the reason that the Treasury has offered that is because of a decision in the case which we might cite as the *Livingston* case by the Court of Customs and Patent Appeals, in which that court apparently but not really changed a procedure.

In the *Livingston case* what the court held, I am convinced upon a restudy of the decision, was that the foreign value included all unrestricted sales in the foreign market, except those for export to the United States. That is, in obtaining evidence of foreign value, be it

the importer or the Government representative, he goes to the man who sells that commodity in the exporting country, and he asks, "What sales of this commodity have you had?" And he says, "I have had 10 sales here and there." Now, let us say that one-half of them were apparently to be consumed in that country and the other half were for exportation, say, from England to South America. This decision of the court does not hold, as the Treasury evidently believes, that those export transactions alone are evidence of a foreign value where those export transactions are earmarked or restricted for exportation. It simply says that the evidence shall consist of sales which are made in that market, whether they ultimately go for export or whether they go for home consumption.

Now, the point that I desire to call to the committee's attention is that the insertion of the words "for home consumption" means that to obtain proper proof you will have to follow a commodity into consumption in the country of exportation, and that makes it very much worse for the Government than the situation created by the *Livingston case.*

I therefore suggest that as the words in the bill "for home consumption", will cause more trouble than now exists, much more trouble, that if the Treasury still feels that a change in the law is necessary to avoid Treasury embarrassment, that they accept this suggestion: Add to the end of the paragraph:

Provided, That no sale in the country of exportation conditioned upon the merchandise being exported to any country shall be evidence of foreign value.

Section 14 (a) on page 15, the word "instruction" sought to be inserted in section 499 by this amendment has heretofore been used as meaning the communication between the Secretary of the Treasury and a customs employee, and it has been a secret, nonpublic communication. We believe that the use of that word should not be extended to matters which involve the rights, duties, or liabilities of importers or of the public at large.

In the Treasury regulation it is stated that the Treasury is embarrassed by court rulings, that such regulations under existing law must have general application, and that they have seriously interfered with customs administration. That is apparently unhappily stated, because the Court of Customs and Patent Appeals in *U. S.* v. *Tower*, reported in Treasury Decision 48754, says this [reading]:

We do not think the Congress used the word "regulation" in the term "special regulation" as being synonymous with the word "instruction". The Secretary of the Treasury frequently gives instructions to customs officials in customs matters where they pertain to such duties as would not involve the rights of the importer. Regulations have always been regarded as meaning something of which interested importers rightfully should be informed. Therefore, regulations made pursuant to a tariff act should be promulgated in such manner as to give notice to interested parties.

Now, that is what the Court of Customs and Patent Appeals said about this very question.

Secondly, I do not believe that the Treasury is justified in asking for the insertion of the word "instruction" in addition to the power which they now have to issue a special regulation, because in that case the court stated further:

* * * but this is no warrant for the conclusion that Congress contemplated that a mere instruction in the form of a letter not seen by interested importers,

and not promulgated, would make valid an otherwise invalid appraisement. * * * We are, therefore, of the opinion that by the term "special regulation" Congress intended to authorize the Secretary of the Treasury, under certain circumstances, to make a regulation apply only to a special port or ports and to special goods.

In other words, we believe that the Secretary of the Treasury now has ample power to control, by a properly promulgated special regulation the very things that this bill seeks to do by a secret, private, or nonpublic communication between the Treasury and a Treasury employee. If, in spite of the ample authority which now resides in the Secretary of the Treasury to control matters of this kind by special regulation it is thought necessary to extend additional broad powers of governing the affairs of the public and importer by instruction, then it is recommended that there be added to such a provision the following:

That all general or special regulations or instructions shall be duly published according to law within 10 days after the issuance and before liquidation of any entry affected thereby.

Section 14 (a) contains a second paragraph, that "No appraisement shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination," and so forth. The beginning of that statement, "No appraisement shall be held invalid," means that if this act becomes a law that on the day that it is effective the customs courts, after maybe 2 or 3 or 5 or 10 years' trials on a case involving that question, must stop with their pen in air and not sign or promulgate that decision.

Now, that is a very harsh thing to do; very harsh. I do not believe that the Treasury can possibly mean that that is their wish in the matter. I therefore suggest that if this policy—and we have nothing to do with policies—if this policy of requiring 10 percent of imported merchandise to be examined is to be abandoned, that section 14 (a), page 15, line 24, be amended by inserting after the word "appraisement" the words "hereafter made", so that no question of that kind may arise.

In connection with that question I desire to call the committee's attention to the fact that in the case of *Tilge* v. *United States* (2 Ct. Cust. Appls. 149), decided in May 1911, this provision of the examination of 10 percent of the imported packages was held mandatory, and that has been approved in subsequent decisions right down to date.

Three tariff acts have been passed, all including the same phraseology, since this decision was rendered, and the courts have held that while it is mandatory there is a substitute process open to the Secretary of the Treasury, that is, by a general or special regulation, reduce that 10 percent to whatever quantity he may desire to examine.

It is only in those cases where the Secretary of the Treasury failed to avail himself of that right to create a substitute process, and in addition thereto the local appraiser has failed to perform the mandatory duty imposed on him by Congress that any such case can arise.

Now, I am not prepared to say, in fact I would not say, that it is a bad thing to legislate covering that situation for the future, but

certainly it is bad to legislate for the purpose of covering cases that have been for years in process of litigation.

Section 14 (b), page 16, line 10: This provision admits speculative theories and hearsay evidence into records which have heretofore been free therefrom, and we believe that the Assistant Attorney General in charge of customs and the Treasury, upon further consideration of this section, will perhaps agree with us that no beneficial results will flow either to the Government or to importers from the enactment of this section, and we suggest, therefore, that this section known as 14 (b) be stricken out of this bill. I do not know whether it would be proper for me to ask the Treasury if I have correctly stated their position, because if they do not agree with me I have a few more words that I would like to say on that subject.

Senator WALSH. There is no objection to your making that inquiry of the Treasury.

Mr. BARNES. Thank you, sir.

Mr. JOHNSON. Mr. Chairman, we have a substitute provision for subsection (b), beginning on line 10, page 16, which we propose to submit for the committee's consideration.

Senator WALSH. You might confer with the representatives of the Department afterward and see if that is agreeable to you.

Mr. BARNES. Yes, sir.

Mr. JOHNSON. We shall be glad to do that.

Senator WALSH. You can submit later any comment you wish to make on any proposed new section.

Mr. BARNES. Section 14 (c), on page 17, beginning at line 9, is apparently drafted to cover the contingency of a protest against a liquidation based on an illegal appraisement, an illegal local appraisement. We believe it is somewhat unhappily drawn, because it does not fit the machinery of the customs court. If it is to be included as affecting any change which is made in (a), it seems to me it should read:

> If in a final determination of a protest or reappraisement the appraisement of merchandise is found to be either invalid or void, the case should be remanded to the proper judge of the United States customs court sitting in reappraisement, who shall determine the dutiable value of such merchandise in the manner provided by law.

We believe that it is the purpose of this section to cause to be appraised by the customs court merchandise upon which there has been a neglect of duty or a mistake by the local appraiser which has necessitated a finding of invalidity or illegality of one kind or another and the desire of the Treasury to cure the apparent defect caused by no appraisal being in existence. I think the proposal is sound but the remedy does not fit the existing machinery.

Mr. JOHNSON. Mr. Chairman, if the committee desires, we shall be glad to discuss that amendment also with Mr. Barnes.

Senator WALSH. I will say for the benefit of the witness that all your observations and the observations of all witnesses have to be submitted to the Treasury by the committee for their viewpoint and the reasons why they may oppose or not oppose the observations made by you and other witnesses.

Mr. BARNES. Section 15, page 17, line 17, involves the change in procedure on American manufacturers protests; and after consider-

ation of the matter, both from the standpoint of those members of the association who represent American manufacturers principally and those members who represent importers principally, we have come to the conclusion that between those two lines we cannot say much officially, except that this curtailment of the rights of American manufacturers to protest, if decided as a matter of policy by the Congress to be justified, certainly should contain some provision requiring the customs court to give to American manufacturers' protests a preference, because if the American manufacturer is no longer to be permitted to tie up merchandise—and personally I think it is right that he should no longer be permitted to do so—that in order to avoid the large influx of imported merchandise which will occur when an importer wishes to take advantage of an existing rate prior to the possible fixing of an adverse rate as the result of one of those protests, that the American manufacturer should have a preference in the customs court so that he can get through with his case quickly before the man on the other side takes advantage of the situation caused by the delay.

Senator CONNALLY. That is all you have to say on section 15?

Mr. BARNES. Yes, sir; that is the only comment we have to make on it.

Senator CONNALLY. You do not mean a preference, but a preferential advancement before the court?

Mr. BARNES. A preference on the docket.

Senator CONNALLY. Are there any preferences now on the docket?

Mr. BARNES. No.

Senator CONNALLY. Of no kind?

Mr. BARNES. No. On page 21, section 16 (a), in line 15, the insertion of the word "duties" and the insertion of the words in line 23 "and taxes" is apparently for the purpose of conforming section 520 of the act of 1930 to the proposed new section 528 as set forth in section 18 of this amendment. Now, if taxes are not to be construed as duties, then any payment demanded by the collector of customs on importations of merchandise which is not treated in the enabling statute as a duty cannot be refunded. They are in the Treasury forever.

Senator CONNALLY. Not forever. It will not stay there that long.

Mr. BARNES. No, no; but as far as the man who pays it is concerned, it is there forever.

Also if a charge or fee or exaction is called a tax, it cannot be refunded no matter how illegal the exaction has been. If section 18 stands, it may be that section 16 is proper. I therefore ask your attention to section 18, which I will take up in just a moment.

On section 16 (b), page 23, line 8, the bar has asked me to state that much criticism has been aroused, particularly by small importers, over their inability to obtain refunds of excess duties deposited by them after the courts have held them properly entitled to the same. This, we understand, has been due to the exhaustion of the annual appropriation for the refund of customs duties. If the abandonment of indefinite appropriations be a settled fiscal policy of Congress, then we respectfully suggest that a much more accurate estimate be made of the total required for customs refunds in fixing the annual appropriation therefor. These deposits are of money illegally held by the Government, without interest, and to fail to receive them after

a favorable court decision arouses the citizens' wrath sometimes out of all proportion to the amount involved.

Referring to section 18, page 23, line 19, a new provision is proposed to be added to the Tariff Act of 1930 as section 528, and it provides that—

> No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue—

unless the statute specifically states that it is a customs duty or is to be treated as such.

This, we believe, is a very direct—and in spite of the opinions expressed at this hearing by the Treasury, I, unfortunately, am compelled to adhere to the position that this is a very direct deprivation or withdrawal of jurisdiction from the customs court. A great deal has been said in the hearings before this committee on that subject. I hope that I will not duplicate any more than is necessary the ideas which have been expressed, but I would like to call the committee's attention to the fact that for many, many years, almost since these customs courts were created as an independent judicial tribunal for the litigation of customs questions, they have taken jurisdiction and have passed on cases which involved internal-revenue taxes collectible or collected by the collector of customs and it has been a sensible rule. (See Revenue Act of 1918 and *Shaw* v. *U. S.*, 11 C. C. P. A. 226.) It has meant efficiency in the way of speed and low cost to litigants and a speedy determination of questions which the Government sought to have settled. Without boring the committee by stating them, I would like later to put in the record a half dozen cases of the kind I mean, where internal-revenue taxes have been passed on by this court.

Senator CONNALLY. Those internal-revenue taxes, were they general internal-revenue taxes?

Mr. BARNES. The law provided for the same tax on both imported liquor in bond and domestically produced liquor.

Senator CONNALLY. On all articles of that kind, whether imported or not?

Mr. BARNES. Yes. They apply, however, to imported liquors, to imported tobacco, or something of that kind, while there was another section having to do with the domestic production.

Senator CONNALLY. I mean the tax was not dependent on whether it was an import or not?

Mr. BARNES. No; it was not dependent on that. It was the same as the tax that was on everything else. I will give you a list of those cases in a moment.

Senator WALSH. The court took jurisdiction if there was an excise tax on liquor or a tariff duty or tax on an import?

Mr. BARNES. Yes.

Senator WALSH. Is that true in all these cases?

Mr. BARNES. Yes. The *Shaw case* is one that I have in mind where that was the question in issue.

In the case of *Shaw & Co.* v. *U. S.* (11 Ct. Cust. Appls. 226), the court stated (1921):

> Taxes levied on domestic spirits, whether in bond or not, are beyond question excise or internal revenue taxes, and taxes levied on distilled spirits imported into the country and still in customs custody are just as certainly imposts on

imports and therefore customs duties. The designation of a tax on domestic products or industries as a customs duty would be an inexcusable misnomer; and it is no less a misnomer to call a levy on imports in customs custody an internal revenue tax. True enough, excises and duties are both in a sense indirect taxes; nevertheless, they are so essentially different that neither can be converted into the other or into anything else by simply giving it another name. If it were otherwise, the constitutional provisions which reserve to Congress the right to regulate commerce among the several States and which inhibit the States from laying imposts or duties on imports or exports without the consent of Congress might be avoided and defeated by the simple process of dubbing such taxes license fees or stamp taxes, as was attempted by the State of Maryland in 1821, by California in the fifties and by the State of Tennessee in 1881. (*Brown* v. *Maryland*, 12 Wheat. 4190; *Almy* v. *California*, 24 How. 169-173; *Robbins* v. *Shelby County*, 120 U. S. 489).

Moreover, the limitation on the power of Congress to lay a tax or duty on articles exported from any State might be readily evaded by the adroit expedient of imposing a stamp tax on bills of lading or by levying on such articles a so-called internal-revenue tax. The National Government cannot impose any tax burden on exports of the States, and the States on the other hand cannot subject either imports or exports to any impost, whatever may be the name or guise it takes. In other words, the name of a tax does not determine its nature. (*May* v. *New Orleans*, 178 U. S. 496-507; *Fairbank* v. *U. S.*, 181 U. S. 283-290-291.)

Whatever, therefore, may have been the "excise" or "internal revenue" taxes levied by the act approved February 24, 1919, the taxes levied by it on imports in customs custody were essentially "customs duties" determinable and collectible as prescribed by laws. (*United States* v. *Shallus*, 9 Ct. Cust. Appls. 168 T. D. 37999; *Porges & Levy* v. *United States*, 1 Ct. Cust. Appls. 244 T. D. 38575; *Batjer & Co. et al.* v. *United States*, 11 Ct. Cust. Appls., 60 T. D. 38720.)

Senator WALSH. When was the decision? Did that change the form of construction?

Mr. BARNES. It has never been changed. This is an effort to change it.

Senator WALSH. I thought there was a decision of the court that led the Department to make that recommendation.

Mr. JOHNSON. Mr. Chairman, the first case that I recall arose under the Revenue Act of 1917, and from that time on the courts held that they had jurisdiction, but did not rule upon any other phase of the internal-revenue tax matter. It was not until 1935 that the court held squarely that for purposes other than its own jurisdiction an internal-revenue tax on imports was a customs duty.

Senator WALSH. And it was that decision that led the Treasury Department to draft the language in this?

Mr. JOHNSON. Yes, sir; the decision in 1935.

Mr. BARNES. That it was an internal-revenue tax. The Congress cured that apparent defect by a special enactment covering the situation in the *Schwing case*.

Now, recently a case on compensating taxes has been decided favorably to the Government, within a week or 10 days, in the *Marshall Field case*, holding that enactment by Congress did not deprive taxpayer of a remedy, that they had given a substitute remedy when they withdrew the one that existed, and holding that the customs courts had no jurisdiction of that question, because Congress said that they should not have.

Heretofore, in the enactment of certain taxes, excise taxes, such as the act of 1932, 1934, and 1936, Congress has said this, as it did in those acts:

The tax imposed under section (a) shall be levied, assessed, collected, and paid in the same manner as the duty imposed by the Tariff Act of 1930, and

shall be treated, for the purpose of all provisions of law relating to the customs revenue, as a duty imposed by such act, except—

and so forth.

Now, the reason for that is perhaps best stated by an example. If the collector of customs is called upon to classify and take both duty and tax on an importation of whale oil, allegedly whale oil, and he takes 0.8 cents duty under the tariff act, he also takes 3 cents a pound under the excise-tax law on the same commodity. Now, if an importer says, "But this is not whale oil at all. I have paid this duty because I have to get my merchandise. I reserve my right to protest, but this is not whale oil at all." Now, under this proposal he will have to litigate that before the customs court on the duty question and before the Commissioner of Internal Revenue on the tax question on the same merchandise. The same importation, imported on the same ship, must go into two tribunals, one of which ends at the Court of Customs and Patent Appeals and the other may go to the United States Supreme Court and produce two different answers on the same question. Now, that is inefficient, that is costly.

The Congress has seen fit, over all these years, to set up an efficient, speedy, and cheap method of litigating the questions that arise by reason of demands by the collector of customs. Rather than take away any jurisdiction that now exists and that has existed for years we should add to the customs court jurisdiction on such kind of cases, rather make it certain that that should continue, because the same man pays that tax whether it be called a duty or excise or internal revenue, he pays it to the same person at the same time and there is no reason why he should have to litigate it in two different places. It is not a fair thing and it cannot possibly result in any advantage to the Government.

Senator WALSH. For your information I will say that the Treasury does not agree with that construction.

Mr. BARNES. I know they do not agree with it.

Senator WALSH. We will be pleased to have your viewpoint. I thought you did not know of that.

Mr. BARNES. I know they do not agree with it, but there are 11 members of the board of directors of the customs bar, specialists in this line of practice, all men that have been in the practice for 20 years and upward, and the unanimous opinion of those men is as I have stated it. Apparently the unanimous opinion of my friends over here is that it does not take away any jurisdiction, but I would like them at some time to inform the committee of what they will do under this law in a case such as the *Shaw case*.

Senator CONNALLY. Let me ask you a question there. While this internal-revenue tax, as you answered to my question a while ago, is levied on all similar articles, yet in a particular case where there is an import, unless that import is admitted you would not pay an internal tax on it?

Mr. BARNES. That is correct.

Senator CONNALLY. Your contention is that the determination should be in the same authority, that the same authority should deal with both of them in that kind of a case?

Mr. BARNES. Yes, sir. It is only the cases where the collector of customs takes that tax, call it what you will, at the time of entry of the merchandise.

Senator CONNALLY. He is required to take it, is he not?

Mr. BARNES. I am only speaking of such cases. I am not speaking of any case where, after the merchandise is in the country, there comes along an internal-revenue collector and says there is a tax of some kind on that. I am only speaking of the thing that is demanded and paid at the time of the entry of the merchandise into this country, which, I believe, there is sound authority for holding it a customs duty, whether you call it a tax or not. I mean the Supreme Court has come so close to that very thing that one might almost judge it to be fixed law.

As far back as *Brown* v. *Maryland*, where they attempted to assess a $50 fee on imported merchandise by a State, call it what you would, a license fee or anything else, it was nevertheless a tax on imports.

Senator CONNALLY. That is 100 years old, that decision.

Mr. BARNES. Yes; and we have been going right down the line in a case of that kind.

Senator CONNALLY. The city of Baltimore established the fees in trying to protect their local merchants.

Mr. BARNES. Yes; they charged them $50 license fee for passing imported goods through the port.

Senator CONNALLY. They held the law unconstitutional.

Mr. BARNES. They held the law unconstitutional, and therefore I say, whether the law be that Congress has power by calling a thing a tax to make it a tax instead of a customs duty or not, there is no excuse in our opinion for this section 528, there is no reason for it.

The *Schwing case* has been disposed of legislatively. The *Marshall Field case* is a judicial decision that compensating taxes are not within the jurisdiction of the customs court because Congress said they should not be.

There isn't apparently any question left open except the rather narrow one that is in the *Faber, Coe & Gregg case*, and my guess is as good as my friends' as to how the Court of Appeals will decide that. The fact remains that all of the things sought to be done here are the result of legislation during the past 4 or 5 years. I do not believe that the jurisdiction of that court should be disturbed on the broad, general ground that they have laid down by any blanket legislation.

If Congress in its wisdom, sees fit, in a particular statute in the future, to say that shall not be litigated in the customs court no one can find fault with that as a decision on policy, but let it be in those particular cases as, when and if they arise, rather than a blanket prohibition that deprives an importer of a substantial right to litigate speedily, efficiently, and cheaply both of his questions in the same tribunal.

This amendment contains no saving clause whatever, this whole act, H. R. 8099.

Senator WALSH. You are not now talking to the section that you just discussed?

Mr. BARNES. Now, I am talking to a section which I think should follow section 31, and would cause the renumbering of sections 32 and 33, suggesting the insertion of a new section to be known as section 32, ahead of the present section 32.

The Tariff Act of 1930 contains a repealing and saving clause, saving the rights, liabilities, limitations, and so forth, accrued prior to the effective date of the act. This act is an amendment to the Tariff Act of 1930, and I was somewhat surprised at my inability to find any court decisions on the subject, any authoritative decisions on the subject of whether an amendment passed after a saving clause became subject to that saving clause. I doubt now very much whether, if this bill is passed as an amendment to the Tariff Act of 1930, that section 651, the saving and repealing clause, will affect the provisions of this amendment.

Therefore I suggest, in order to be safe in the matter, saving the possibility of the Treasury wanting to ask Congress to make that provision about taxes retroactive—and I do not know what their position is on that—saving that possibility this should contain some kind of a saving clause, because it seems quite obvious that it cannot be meant or intended by anyone that cases carried over from 1913 to 1922 Tariff Acts, and now in litigation, which are now perhaps concluded except for decision by the customs court, should be chopped off by a prohibition of any kind.

Senator WALSH. Will you read your proposed amendment, please?

Mr. BARNES. We therefore propose the following [reading]:

> This act and each provision thereof shall not affect any act done or any right, liability, or limitation accrued prior to its enactment, and shall be subject to the repeal and saving clause known as section 651 of the Tariff Act of 1930.

I would like to cite two or three of the cases I referred to.

In the case of *Faber, Coe & Gregg, Inc.* v. *U. S.* (19 C. C. Pa.), so-called revenue taxes assessed on imported cigars and cigarettes were held to be duties and properly within the jurisdiction of the United States Court of Customs and Patent Appeals.

In the case of *Brown & Co.* v. *The United States* (11 Ct. Cust. Appls. 402) it was held that a tax of $1.10 assessed on imported distilled spirits, under the Revenue Act of 1917, did not attach to certain imported alcoholic compounds, and the refund of such tax was directed on the mandate of the United States Customs Court.

I thank you.

Senator WALSH. Mr. Marshall.

STATEMENT OF F. R. MARSHALL, SALT LAKE CITY, UTAH, SECRETARY, NATIONAL WOOL GROWERS' ASSOCIATION

Senator WALSH. Your full name is F. R. Marshall?

Mr. MARSHALL. Yes, sir.

Senator WALSH. You are secretary of the National Wool Growers' Association, Salt Lake City, Utah?

Mr. MARSHALL. Yes, sir.

Senator WALSH. We will be glad to hear you.

Mr. MARSHALL. Mr. Chairman, I can assure you that Mr. Fawcett and myself, for whom I will ask some few minutes on some technical phases of section 28, can both conclude by 12 o'clock. I will not take your time regarding my qualifications or the status of the National Wool Growers' Association further than to state that we are the only spokesmen for the wool producers and we can assure you that there

is no other organization of wool growers anywhere but what is in sympathy with our representations in this matter.

I wish first, Mr. Chairman, perhaps a little out of order, on behalf of the wool growers and producers of the United States, to endorse section 29—as I understand it has been accepted by the Treasury—and also the Guffey amendment which is before you relating to an amendment in paragraph 1115 (b). Those manufacturers are our good customers, and anything that leaves them in a position to buy more wools helps us. The rest of my testimony, Mr. Chairman, will relate to section 28.

I am afraid I am going to get into some matters that are more or less legal and I must ask your indulgence because I have no legal training whatever. I am just going at it in a wool grower's way to present to you what we think are our difficulties.

Even after the modifications, which this bill contains, from the original House bill I am compelled to call your attention to the fact that the latter provisions of this revised form of paragraph 1101 do make duty rates. So far as I am informed it is the only part of the bill that goes into the rate-making matter, but this, I am sure, will be conceded is a rate-making proposition.

I would first call your attention to the fact that the proposed language in the first part of section 28, which is on page 32, proposes the elimination of the time limit allowed to importers of carpet wools in which to show proof of use of wools for the enumerated purposes. I will just mention that the purposes for which those wools are admitted under the present law free of duty are the production of press cloths, camel's hair belting, knit or felt boots or heavy fulled lumbermen's socks, rugs, carpets, or any other floor coverings. I shall refer hereafter to those as the enumerated articles in paragraph 1101.

The proposed revised language would eliminate any time limit in which the importer might show the Treasury proof of his goods having been used for those purposes, and therefore being released from the bond for duty.

We understand that effect has already been given to that change by Executive order and we are not protesting it here. It caused us some concern at first, but we will leave that in the judgment of the committee.

Now, I also contend that the proposed language removes the penalty of 50 cents per pound plus the duty of 24 cents per pound of clean content, as prescribed in paragraph 1101 of the present law. On later examination, however, of the latter part of this section I find there still is a part of a penalty provision therein. I am not very clear in my mind as to just how that would operate. As I see it now, it would only become effective in case a man diverted some of these wools to uses not enumerated in paragraph 1101 and did not so report. As to the chance of conviction under that language, I express no opinion.

I would call the attention of the committee, however, Mr. Chairman, to the fact that in the act of 1922 the Congress provided that when wools of this type were devoted to other than the enumerated uses under the paragraph a penalty of 20 cents a pound plus the regular duties were to be imposed, but in the act of 1930 you provided that that penalty should be 50 cents a pound. Apparently, there

was some concern over the diversion of those wools to uses other than those enumerated and permitted to be imported free of duty.

Also there is the matter that will come up now of the dutiability of some of these byproducts of these duty-free wools. I might say, Mr. Senator, that from the wool growers' standpoint, we consider that the protection which Congress afforded our industry as wool producers is carried in paragraphs 1102, 1103, and 1105. 1104 is an administrative matter.

Our feeling is, and I will briefly give my reasons for it in a moment, that to some extent—to what extent we cannot determine—but our feeling is strong that to some extent parts of these wools permitted to be released from bond and duty free under paragraph 1101 enter into uses for purposes in competition with the wools upon which we are supposed to have protection in paragraph 1102. That is our feeling, and we are unable to get any facts or information from the Treasury to disabuse our minds of that fear. So far as that may be right, we are being deprived of protection which the Congress provided us, and the Government is being deprived of revenue on such articles as may be diverted from paragraph 1101 uses into other uses and which we think properly should pay the 50-cent penalty, or at least the regular duty, when used for apparel or blanket purposes, as provided in paragraph 1105. The reason we cannot attempt to estimate the amount of such diversion, which we believe to have been not in accord with the intent of the law, is that the data are not available.

I said to the House committee when this matter was up last spring, that we had endeavored to get the data on these diverted imports from the Treasury and they were not available at that time.

Senator CONNALLY. How did they get around this requirement that the importers shall satisfy the Treasury as to the uses to which these wools have been put?

Mr. MARSHALL. In that connection, Senator, I would have to call your attention to a Treasury regulation known as 499 (d), which is as follows:

> In crediting bonds with the quantity of imported wool or hair used, all wastes, except noils, whether valuable or not, shall be considered as having been used in the manufacture of the enumerated articles and due allowance shall be made therefor.

We know, as Mr. Fawcett, my companion witness, will show you, that some of those wools can be, and are used, for other purposes.

Our position, Senator, is that that Treasury regulation 499 (d) is not in fact in accordance with the law of 1930.

Just a word as to the difficulty in arriving at the amount of these imports which we think have been improperly allowed to be diverted and which have been the result of depriving the Government of revenue to which it was rightfully entitled. I call your attention to the only information which we have as to the volume of this material. That is contained in a letter which I have inserted in full in the brief which I will leave with the clerk, from the Commissioner of Customs, dated October 18, 1937. It shows for the year 1936 there were released from bond these carpet-wool wastes to the amount of 6,479,000 pounds. The wastes are enumerated here, but they advise us that it is impossible for them to determine the use to which

any one of those 12 wastes are put, or the amount of any 1 of those particular 12 wastes that entered into that 6,000,000 pounds plus.

I think it would be necessary for a proper disposition of this case for your committee to have the full facts regarding the amounts of those imports, at least within recent years. We requested that information for 1936 and the first half of 1937, and from 1922 down, if possible, but the explanation of the Treasury as to why that cannot be furnished is contained in the letter which is before you in my brief and I shall not repeat it.

Our position, Senator, is that section 499 (d) is not fully in accord with the law. As the Treasury has said in this proceeding, and also in the House hearing, that action has been taken by the Treasury in accordance with a "long-continued administrative practice."

We are delinquent in not having opened this matter up earlier. The fact is that until the House hearing in May of last year our office was not aware of the operation of this 499 (d). We should have objected earlier, but we have good excuse for our failure, which we will not burden you with now. Even though that regulation 499 (d), has the honor of antiquity (since 1923, the fact that a former administration and a succeeding administration may have erred in that concession to the carpet-wool importers' we do not agree or admit it justifies or requires the present administration to perpetuate the mistake of a former administration.

As we understand the language now proposed for you to enact, it would be to completely close the door on any reopening or reexamination of anything that has been done under 499 (d). That is a legal question. It is a question of Government revenue, and I will leave it there.

We are particularly concerned also with the fact that for many years the Treasury has been admitting, releasing from bond and admitting for consumption, carpet wool noils at the rate first of 12 cents, and then, following the act of 1930, at the rate of 14 cents. Our position is, Senator, that those materials, when released from bond for the use of purposes shown in 1101, clearly are at least dutiable under 1105.

I think it might be said by lawyers better than I am, that a release and use for any purpose not enumerated in paragraph 1101 would make them subject to the duty of 50 cents a pound penalty, but penalties would not do the wool growers any good now. We think they clearly should have been and still are dutiable under 1105, which is 23 cents if not carbonized. The amount, I should say in fairness, as shown in the Commission's letter of October 18, which I am placing before you, is a comparatively small amount, so far as carpet wool noils released through the customs office during the year 1936 is concerned. I call your atention to the fact that although some 131,000 pounds were so released on the payment of the 14-cent duty in 1936, it is entirely possible and not improbable that considerable quantities of those carpet wool noils were accumulated through 1936 and released in 1937 in larger quantities, but unfortunately the Treasury has not been in the position to give these statistics in that matter. I hope that may be furnished to this committee before this matter is finally disposed of.

There is one other thing that I must mention here, Senator, and that is that this paragraph 1105 is now listed by the Department of State

as one of those upon which the United States will make concessions on duties in negotiating a trade agreement with the United Kingdom.

I am not going to violate the proprieties by going into that matter, which is beyond the jurisdiction of the Senate at this time, but I want to call your attention to the fact that again it is quite possible, and rather to be expected, that within a few weeks the 23-cent duty, which is the minimum we are contending for in these carpet wool noils and the other duties prescribed on the other wastes in paragraph 1105 will be reduced beyond any possibility of action by the Senate by 50 percent; the noils will have duties reduced from 23 cents to 11½ cents, and I presume by the same token that the present rate of July 1, 1937, if you should legalize it, which is 14 cents, would, by the same action, be reduced to 7 cents, in which case the wool growers would have the protection against the import of carpet wool noils used for apparel and blanket purposes of only 7 cents instead of 23 cents, to which the law now entitles them, if not the 74 cents which the strict interpretation of paragraph 1101 would call for.

Our recommendation for the present, Mr. Chairman, is that the situation be clarified by an amendment to delete comencing on page 33, line 17, after the word "transfer", and to insert instead of the colon a period, and then to strike out the balance of line 17 and all the way down to page 34, line 1, and down to and including the word "articles" in line 2. I would not be certain that that would entirely cover our position, but I think it would, in the main, do so.

We object, in lines 19 and 20 there, to the proposition of the Congress empowering the Secretary of the Treasury to use his discretion as to whether a product in fact, or any product in any amount shall be dutiable or nondutiable. The proposed language would leave it for the Secretary to determine whether such a byproduct of free-imported carpet wools can be used with or without further preparation in the usual course of the manufacture of such enumerated articles.

We do not understand the reason for stating this proposal to legalize the present improper duty on carpet wool noils by simply a reference in the proposal to the Congress to legislate that the duty shall be at the rate which was being applied on July 1, 1937. If it is intended to be 14 cents, I think it should be so stated. By the time this bill becomes law that rate may have been reduced 50 percent.

Our purpose, Senator, is only to insure to the growers the protection on all imported products of wools used for apparel or blanket purposes, which the law plainly intends they should have, and, of course, consequently, to insure to the Government the revenue to which it is properly entitled.

If I may, Senator, I will inquire of the Treasury whether or not the language here proposed, if enacted, would call for a revision or modification of the present Treasury regulation 499 (d)? Could you answer that. If you could, I would appreciate it.

Mr. JOHNSON. I can; yes. If this section were enacted into law the provisions of the regulations governing the use of carpet wool would have to be revised. This would require an entire new set of carpet-wool regulations.

Mr. MARSHALL. Depending on what that revision might be, it might change our position, Senator, but still we feel we would have to maintain our opposition to proposals here in the language which we

have asked to be deleted, to empower the Secretary to use his discretion in certain cases, and also to legalize the present rate of 14 cents on noils; to legalize it for the future provided the State Department does not change it, and to declare it legally closed for the past.

Senator WALSH. Mr. Marshall, you may insert your brief into the record, if you like.

(The brief of Mr. Marshall is as follows:)

The National Wool Growers' Association is a voluntary and unincorporated organization of wool growers doing business in Texas, and what are commonly referred to as the 11 public-land States. However, less than 20 percent of the sheep in these 12 States graze for any part of the year upon national forest lands or upon Taylor grazing districts. Two-thirds of all sheep in the United States are owned by 84,000 persons in these 12 States. They are kept chiefly upon privately owned lands which have little or no value for any purpose other than the grazing of sheep.

In the other 36 States, 505,000 farmers are owners of 18 million sheep. These owners are but slightly organized, a few of them are members of our association. We attempt to speak for the whole sheep industry. So far as we know, there is no other organization that assumes this task in whole or in part, and we believe we express the views of more than a large majority of the 589,571 wool growers of the country.

BLANKETS AND FELT HATS

My testimony on behalf of wool growers relates to section 28 of H. R. 8099. Before going into that, I would like to inform your committee that we endorse the amendment proposed in section 29 and also the Guffey amendment to paragraph 1115 (b). The manufacturers of blankets and felt hats are the wool-growers' customers and anything that enables them to buy more of our wool is an aid to our industry.

SECTION 28, H. R. 8099

The new language proposed takes out of the present law the limit of 3 years now allowed to importers of duty-free carpet wools to show that such imports actually have been used in the manufacture of "press cloths, camel's hair belting, rugs, carpets, or any other floor coverings, knit or felt boots, or heavy fulled lumbermen's socks."

We understand that this time limit already has been removed by executive order, and that the Congress is now recommended merely to confirm that action.

The language proposed by the Treasury Department would also remove the present penalty of 50 cents per pound in case wools released from bond are used in the production of articles not now enumerated in paragraph 1101 as entitling these wools to be imported without payment of any duty.

PENALTIES

We do not oppose the lifting of this penalty if it is assumed that when products of such wools are used as substitutes for wools or products dutiable under paragraphs 1102–1105, that they pay the duties prescribed in those paragraphs.

We feel that such collection of duties was the intent of the present law and that a fair interpretation of the law requires that the duties shall be so collected.

CARPET NOILS

During the hearings in connection with what is now the Tariff Act of 1930, the witnesses who appeared for the wool growers did not oppose the duty-free importation of wools to be used for the purposes specified in paragraph 1101. It was the growers' clear understanding that if any part of such wools should be used for the purposes for which the American wool grower was given his protection under paragraphs 1102–1105, that such wools or products of them would pay the duties prescribed in those paragraphs.

But such has not been done. As a result of "a long continued administrative practice" the Treasury has permitted noils made from wools imported free

under paragraph 1101 to be diverted to uses other than those specified in that paragraph, by payment of, first 12 cents, and later 14 cents, instead of the duty of 23 cents for uncarbonized noils required by paragraph 1105 of the Tariff Act of 1930.

It is impossible to estimate the amount of revenue lost to the Government by this "administrative practice," which we argue was not authorized by law, because we are unable to obtain from the Treasury Department the amounts of such carpet wool noils permitted to be diverted to other uses under payment of only partial duty, except for the year 1936. That figure will be shown in just a moment.

CARPET WOOL WASTES

Then there is the matter of byproducts, other than noils, from wools imported duty free, and used for the production of goods other than those enumerated in paragraph 1101.

Here again, we must argue, that whenever any wastes or products of wools that are duty free under paragraph 1101 are sold or diverted to be used for any other purpose, they should pay the duties prescribed in paragraph 1105. It does not seem to us that the authority given the Secretary of the Treasury by the first three lines of paragraph 1104 convey power to entirely remit duties on products of wools imported without payment of duty and used for purposes other than those enumerated in paragraph 1101. Yet we understand that this has been done.

AMOUNT OF WASTES ENTERED FREE

In May of last year we verbally requested the Commissioner of Customs to furnish us with the weights of carpet wool wastes and noils, the duties upon which we are now discussing. On September 20 we renewed this request by letter. I here insert his reply:

TREASURY DEPARTMENT, BUREAU OF CUSTOMS,
Washington, October 18, 1937.

NATIONAL WOOL GROWERS ASSOCIATION,
Salt Lake City, Utah.

GENTLEMEN: Reference is made to your letter of September 20 in which you requested information for the year 1936 and prior years on "the amounts of noils and other wastes taken from imported carpet wools and, under Treasury regulations, permitted to be transferred to other mills for the manufacture of clothing."

Inquiries made at the principal ports of entry for carpet wool, Boston, Philadelphia, and New York, disclose the fact that the information you seek is not available from customs record. The ports mentioned report that, during the calendar year 1936, duty at the rate of 14 cents per pound was assessed, under article 499 (d) of the Customs Regulations of 1931, on 134,801 pounds of noils produced from wool imported under bond under paragraph 1101 (a) of the Tariff Act of 1930 and disposed of for use otherwise than in the manufacture of articles enumerated in that paragraph. The same reports show, for the year 1936, a total of 6,470,124 pounds of hard and soft wastes produced from wool imported under bond under paragraph 1101 (a) and disposed of "out of bond." The last-mentioned figure included: Burr waste, paint clips, soft waste, thread waste, leas and fur waste, card waste, sweepings, yarn waste, shear dust, hard ends and other hard waste, fly waste, miscellaneous.

Although the exact figures cannot be stated, the Bureau is satisfied that not more than a very small proportion of these wastes were suitable for use in the manufacture of clothing. For example, of the 775,591 pounds of waste sold out of bond in the Boston district, only 870 pounds are listed as "soft waste." Furthermore, it is quite possible that wastes sold out of bond and suitable for spinning into yarn for clothing or other purposes were, in fact, used in the manufacture of carpets.

It cannot be established definitely what percentage of the wool entered under bond, under paragraph 1101 (a), during a given year or other period is represented by the noils and wastes referred to above, because such noils and wastes may have consisted of accumulations during several years. However, it may be observed that 134,774,300 pounds of carpet wool were entered under bond during the same year in which the above noils and other wastes were disposed of "out of bond."

As stated above, the Bureau cannot secure in complete detail the information you request. Furthermore, to obtain data for the several past years such as is stated above for the calendar year 1936 would require an amount of work which cannot be undertaken at this time in view of our limited customs personnel and the great volume of other work to be done.

Very truly yours,

J. H. MOYLE,
Commissioner of Customs.

It will be seen that in the year 1936, 6,470,124 pounds of hard and soft wastes from wools admitted free of duty were allowed to be disposed of "out of bond" without payment of any duty. In the same year 134,801 pounds of noils likewise from duty-free wools were allowed to be disposed of "out of bond" upon payment of a duty of 14 cents instead of 23 cents.

Commissioner Moyle's letter states: "It is quite possible that wastes sold out of bond and suitable for spinning into yarn for clothing or other purposes were, in part, used in the manufacture of carpets."

We submit that any such possibility is most remote. The higher value of clothing, as compared with carpets, is practical proof that any wool product that can be used for clothing purposes will be so used. Also, when these carpet-wool byproducts can be sold to the clothing manufacturers at the low price made possible by their being entered without payment of any duty, it must be assumed that they are used to the largest possible extent in production of clothing. The intent and meaning of the law is that they properly are dutiable at the rates prescribed in paragraphs 1102-1105 for wools and wool products used for clothing purposes.

DISCRETIONARY DUTIES

To us it appears most strange that the Treasury should propose to Congress that the Secretary of the Treasury should be empowered to determine, out of hand, whether a certain imported article shall be dutiable or nondutiable. Such power is proposed to be granted in H. R. 8099 in the language of the last part of line 17, page 33, down to the word "articles" in line 22 on the same page.

THE RATE OF JULY 1, 1937

Further: What reason or necessity can there be for asking Congress to legislate that the duty on carpet-wool noils "shall be subject to duty at the rate which was being applied on July 1, 1937" (lines 23-25, p. 33)?

The act of 1930 called for the payment of a duty of 23 cents on such noils. They are now paying 14 cents. If that low rate was legal and proper under any provisions of the law on July 1, 1937, it is legal and proper today and next year. We do not believe that the rate now being collected is a legal and proper one. But if Congress legislates as it is asked to do, the present low rate will be legal and it will thereby be legalized for the whole period of the past operation of this "long continued administrative practice," and the same legalizing of free admission of carpet-wool wastes will in all probability also be legalized and the Government estopped from recovering revenue rightfully due.

May I briefly refer to another angle of this situation, which I regret to find, is beyond the present power of the Congress to act upon. Paragraph 1105 of the present law has been listed by the Department of State as under consideration for reduction of duties in the negotiation of a reciprocal trade agreement with the Government of the United Kingdom. If the Congress decides that 14 cents has been and will be the proper rate of duty upon carpet-wool noils, then it soon may be 7 cents. If the Congress decides that 23 cents was and is the legal rate on such noils, uncarbonized, the American wool growers will be assured of a future duty in the amount of at least 11½ cents.

We suggest the following amendment to section 28 of H. R. 8099:

To place a period after the word "transfer" in line 17, page 33, and strike out all language thereafter, down to and including the word "articles" in line 2 on page 34.

Senator WALSH. Mr. Fawcett.

STATEMENT OF C. J. FAWCETT, BOSTON, MASS., GENERAL MANAGER, THE NATIONAL WOOL MARKETING CORPORATION

Mr. Chairman, my name is C. J. Fawcett, representing the National Wool Marketing Corporation, 281 Summer Street, Boston, Mass.

The organization which I serve as general manager is a national cooperative wool-selling agency serving some 25 separate State wool-marketing associations. These State associations which we serve have a total membership of about 30 to 35 thousand wool growers. In addition to serving as sales agent, we represent our membership in legislative matters pertaining to their welfare. We feel that we should fall short of our duty to our wool growers if we did not register a protest against certain provisions contained in section 28 of H. R. 8099, which stands as a proposed amendment to paragraph 1101 of the Tariff Act of 1930, which is commonly known as the carpet-wool schedule. Without going into a scientific differentiation between clothing and carpet wools it should be stated that the bulk of all of our domestic grown wools fall in the clothing or apparel wool classification. We produce very little what is commonly known as carpet wool here in the United States and it is the purpose of the original act to provide protection for our domestic grown clothing or apparel wool and permit the free exportation of carpet wools for the use of manufacturing pressed cloth, camel's-hair belting, rugs, carpets, or any other floor coverings or knit and felt boots or heavy fulled lumbermen's socks, as recited in paragraph 1101 of the act. This amendment, however, if it should become a law would, in our opinion, destroy a portion of the protection for our domestic wool that was clearly provided by the farmers of the Tariff Act of 1930.

Upon the first reading of the proposed amendment it might appear to be only in the interest of clarification and simplification of the original act, but a careful analysis, in addition to some knowledge as to the operation and application of the act now in force, leads to the firm conviction that the proposed amendment is far-reaching in its effect and application. It would, in our opinion, permit the use for clothing purposes, upon the payment of a small duty or no duty at all, of certain byproducts from carpet wools in direct competition with certain types and grades of domestic clothing wool which the original act sought to protect and for which the original act now provides protection.

It is not our desire or purpose to in any way oppose regulations that would make for clarification of the act or simplify its administration. I wish, however, to discuss that portion of the amendment in section 28, beginning with a semicolon, line 17, page 33, and ending with the word "article," in line 2, on page 34, which reads as follows:

> But such duties shall not be levied or collected on any merchandise resulting in the usual course of manufacture of such enumerated manufactured articles which cannot be used (with or without further preparation) in the usual course of the manufacture of such enumerated articles, nor on noils resulting in the usual course of manufacture of such enumerated articles, which noils shall be subject to duty at the rate which was being applied on July 1, 1937, when used or transferred for use in any manner otherwise than in the manufacture of such enumerated articles.

This portion of section 28 we request be deleted, for this will permit the carpet manufacturer to sell all his soft wastes, such as roving, slubbing, top wastes, drawings, and ring wastes, produced in the usual course of the manufacture of such enumerated articles in the clothing wool market without the payment of any duty at all in open competition with similar merchandise made from domestic wool, notwithstanding paragraph 1101 of the Tariff Act of 1930 states—

That if any such wools or hair imported under bond as above prescribed are used in the manufacture of articles other than press cloth, camel's-hair belting, rugs, carpets, or any other floor coverings, or knit or felt boots or heavy fulled lumbermen's socks, there shall be levied, collected, and paid on any such wools or hair so used in violation of the bond, in addition to the regular duties provided by this paragraph, 50 cents per pound, which shall not be remitted or refunded on exportation of the articles or for any other reason.

Now, let us see what the regular duties on such processed carpet wool are. Paragraph 1105 of the act names three very waste matters and the rate of duty in the following words:

Top waste, slubbing waste, roving waste, and ring waste, 37 cents per pound.

The intent of Congress seems perfectly clear that if any of the carpet wool in any state of processing as therein described is used for clothing and blanket purposes that wool should carry the duties prescribed.

Now we are confronted with the astounding fact that the Treasury Department has permitted the soft waste, which is a byproduct of the carpet wool combing process to be sold for clothing and blanket purposes in competition with our domestic wool without payment of duty. In a recent conference with carpet-wool representatives a willingness was expressed to pay a duty upon white waste of 24 cents per pound. In view of their suggestion there certainly can be no doubt in their minds as to whether these byproducts are dutiable if sold for clothing and blanket purposes. It is not our desire to work a hardship on carpet-wool manufacturers and we are perfectly willing that their hard coarse waste sold largely for journal packing at a nominal price should be considered as destroyed and applied on liquidation of the bonds. In some instances, however, the byproduct white soft waste has a market value when sold in the clothing wool market higher than the worsted carpet yarn of which it is a byproduct. Likewise the roving waste in the woolen system in some instances, I am informed upon good authority, has a higher value if sold for clothing and blanket purposes than the clean wool of which it is a byproduct. Yet this proposed amendment would permit all of these byproducts to be sold in the clothing wool market without the payment of duty in open competition with the same product made from domestic wool.

NOILS

The combing operation of carpet wool yields approximately 15 percent noils, which is a very valuable byproduct. Par. 1105 provides a tariff of 23 cents on uncarbonized noils. The original H. R. 7935 page 33 line 24 proposed to change the rate of duty on noils made in the natural course of combing carpet wools from 23 cents to 14 cents. In the present bill H. R. 8099 the wording has been changed to read "which noils shall be subject to duty at the rate which was being applied on July 1, 1937," which means exactly the same thing as the former bill although expressed in different words.

In paragraph 1101 of the act we find the Secretary of the Treasury has power to name the amount of the bond to be posted by importers and users of carpet wool but no place do we find that the Secretary of the Treasury has been empowered to change the rates of duty prescribed by Congress as this amendment proposes to do. If the wool schedule is to be opened and rates changed as this bill provides, we desire at this time to request that our duty of 34 cents per clean pound should be restored on clothing wool not finer than 40's by substituting the word 34 cents instead of 24 in line 7 of paragraph 1101 of the act. This reduction of 10 cents clean on the grades not finer than 40's was done I believe at the request of the carpet people. It is the byproducts of these lower grades not finer that 40's that affords injurious competition to the byproducts of our domestic wool. I am informed by manufacturing authorities that once the sale of these byproducts of carpet wool free of duty is made legal, machinery can be adjusted to greatly increase the production of these valuable byproducts and thereby further reduce the protection Congress intended to provide the domestic wool grower by the Tariff Act of 1930.

Inasmuch as certain representatives of the carpet-wool manufacturers in recent conferences have verbally signified their willingness to pay duty on certain types of made waste that the Treasury Department has been admitting free of duty, there must be a general recognition on the part of such manufacturers that these items are dutiable and that a conference with the consent of the Treasury officials between representatives of the carpet-wool manufacturers and wool growers could adjust this matter equitably to all concerned. It is not the desire of the wool growers' representatives to obstruct progress but rather to preserve for our industry the protection Congress intended to provide in the Tariff Act of 1930.

Senator WALSH. Mr. Lockett.

STATEMENT OF JOSEPH F. LOCKETT, BOSTON, MASS., REPRESENTING THE INSTITUTE OF CARPET MANUFACTURERS, INC., NEW YORK CITY

Senator WALSH. Your name is Joseph F. Lockett?

Mr. LOCKETT. Yes, sir. I represent the Institute of Carpet Manufacturers, whose members are greatly interested in section 28.

In my statement before the committee 2 weeks ago today I said the amendment, while not exactly to our liking, was one which we did not oppose. In Mr. Fawcett's statement, if I understood him correctly, he endorsed Mr. Marshall's suggestion to delete the phrase beginning with the word "but" on line 17 down to and including the word "articles" in line 2 on page 34.

I call your attention, Senator, to the fact that these duties shall not be levied or collected on any merchandise resulting in, beginning on line 19, "the usual course of manufacture of such enumerated manufactured articles which cannot be used (with or without further preparation) in the usual course of the manufacture of such enumerated articles." I think that language gives to the Secretary of the Treasury the necessary power to determine the facts so that no injustice will result.

We do not want to impose any injustices upon the wool growers, and we have tried to follow the law and the regulations as written. As I also said 2 weeks ago today, I think the Treasury Department has done well in administering the present law and the corresponding paragraph 1101 in the Tariff Act of 1922, and this matter can be safely left to their determination, to see that neither the rights of the manufacturers using the wool prescribed in paragraph 1101 nor the rights of the wool growers will be affected in this matter.

I think the suggestion that Mr. Fawcett made about the insertion of the amendment "34 cents a pound duty on wool not finer than 40s" is contrary to the remarks which the representatives of the wool growers made in 1929 before the Senate Finance Committee and before the Committee on Ways and Means, but it is unnecessary to go into that.

I have full faith in the fact that this bill, if enacted in its present form, many of the injustices, if there have been injustices, in the operation of this paragraph will be corrected and worked out by the Treasury Department, which has shown an extreme degree of efficiency in the past.

Senator WALSH. Thank you, Mr. Lockett.

Mr. MARSHALL. If, after a further study of Mr. Lockett's statement, we feel that we would like to make a further statement may we have the privilege of filing it with your committee?

Senator WALSH. That may be done.

The reason I have called Mr. Johnston, the clerk, over, is to state that no more witnesses will be heard before the subcommittee, first of all, and, secondly, all documents, papers, and communications must be filed before tomorrow night for publication in the record of the hearing, and as soon as the record of the hearing is printed we will go in executive session with the representatives of the Treasury, the legislative, and draftsmen. Of course, people who desire to communicate with the clerk may do so, but those communicating will have no place in the record after tomorrow.

I want to compliment Mr. Johnston for his attention and assistance to me in this matter. He has taken a good deal of the burden from my shoulders.

I would like to state that the Secretary of State has written to the chairman of the Finance Committee, Senator Harrison, a letter suggesting an amendment to the pending bill, relative to exemption and drawback provisions for supplies for certain vessels, which will be printed in the record of the proceedings and given consideration by the committee and by the representatives of the Treasury.

(The letter referred to is as follows:)

DEPARTMENT OF STATE,
Washington, February 8, 1938.

MY DEAR SENATOR HARRISON: In connection with the customs administration bill (H. R. 8099), which is now pending before tthe Senate Finance Committee, I should like to suggest for your consideration the possibility of including an amendment to section 309 of the Tariff Act of 1930, relative to exemption and drawback provisions for supplies for certain vessels.

As this section now stands, it is in direct violation of certain of our treaties of commerce and navigation in that it creates a discrimination between American and foreign vessels in respect to supplies of vessels purchased in American ports. The provisions set forth in section 309 provide that articles of foreign or domestic manufacture or production may be withdrawn from bonded ware-

houses or bonded manufacturing warehouses free of duty or internal-revenue taxes when used, among other purposes, as supplies of vessels of the United States "employed in the fisheries or in the whaling business, or actually engaged in foreign trade. * * *." The drawback provisions of the Tariff Act of 1930 were also made applicable to articles of domestic manufacture or production laden as supplies upon "any such vessel."

As already stated, this provision is in conflict with certain of our treaty obligations. In this connection I refer to the Treaty of Friendship, Commerce, and Consular Rights, signed by the United States and Norway on June 5, 1928, and the additional article thereto, signed February 25, 1929. I enclose a copy of this treaty and invite your attention to articles I, VII, and IX thereof. Article IX reads as follows:

"The vessels and cargoes of one of the high contracting parties shall, within the territorial waters and harbors of the other party in all respects and unconditionally be accorded the same treatment as the vessels and cargoes of that party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the government, public functionaries, private individuals, corporations, or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels."

The inconsistency of the provisions of section 309 with our treaty obligations was recognized in the enactment of section 630 of the Revenue Act of 1932, as amended, which provided that no tax imposed under title IV of the Revenue Act of 1932 should be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on "vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade * * *." In other words, under this provision no distinction is now made, with respect to fuel supplies of vessels, between vessels of the United States and vessels of a foreign nation.

The amendment to section 309 of the Tariff Act of 1930 which I wish to suggest would merely generalize the policy adopted by the Congress in the enactment of section 630 of the Revenue Act of 1932 to all supplies of vessels (not including equipment) which are covered in section 309 of the Tariff Act of 1930. This could be accomplished by deleting from the portion of section 309 (a) reading "vessels of the United States employed in the fisheries or the whaling business, or actually engaged in foreign trade" the words "of the United States." This would bring our tariff act into conformity with our treaty obligations, and it would extend the same treatment to all supplies of vessels which, by action of the Congress, is now extended to fuel supplies.

Sincerely yours,

CORDELL HULL.

FRIENDSHIP, COMMERCE, AND CONSULAR RIGHTS—TREATY AND ADDITIONAL ARTICLE BETWEEN THE UNITED STATES OF AMERICA AND NORWAY AND EXCHANGE OF NOTES CONCERNING THE TARIFF TREATMENT OF NORWEGIAN SARDINES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty of friendship, commerce, and consular rights between the United States of America and Norway and an additional article thereto signed by their respective plenipotentiaries on the fifth day of June, one thousand nine hundred and twenty-eight, and the twenty-fifth day of February, one thousand nine hundred and twenty-nine, respectively, the originals of which treaty and additional article, being in the English and Norwegian languages, are word for word as follows:

[NOTE.—The Norwegian language has been deleted.]

The United States of America and the Kingdom of Norway, desirous of strengthening the bond of peace which happily prevails between them, by

arrangements designed to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic, and commercial aspirations of the peoples thereof, have resolved to conclude a Treaty of Friendship, Commerce, and Consular Rights, and for that purpose have appointed as their plenipotentiaries:

The President of the United States of America,

Mr. Frank B. Kellogg, Secretary of State of the United States of America; and

His Majesty the King of Norway,

Mr. H. H. Bachke, His Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

Article I

The nationals of each of the High Contracting Parties shall be permitted to enter, travel, and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing, and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the State of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by its nationals. This paragraph does not apply to charges and taxes in the acquisition and exploitation of waterfalls, energy produced by waterfalls, mines, or forests.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

Nothing contained in this Treaty shall be construed to affect existing statutes of either of the High Contracting Parties in relation to the immigration of aliens or the right of either of the High Contracting Parties to enact such statutes.

Article II

With respect to that form of protection granted by National, State, or Provincial laws establishing civil liability for bodily injuries or for death, and giving to relatives or heirs or dependents of an injured party a right of action or a pecuniary compensation, such relatives or heirs or dependents of the injured party, himself a national of either of the High Contracting Parties and within any of the territories of the other, shall, regardless of their alienage or residence outside of the territory where the injury occurred, enjoy the same rights and privileges as are or may be granted to nationals, and under like conditions.

Article III

The dwellings, warehouses, manufactories, shops, and other places of business, and all premises thereto appertaining of the nationals of each of the High Contracting Parties in the territories of the other, used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers, or accounts, except under the conditions and in conformity with the forms prescribed by the laws, ordinances, and regulations for nationals.

ARTICLE IV

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or nonresident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or nonresident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases. In the same way, personal property left to nationals of one of the High Contracting Parties by nationals of the other High Contracting Party, and being within the territories of such other Party, shall be subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

ARTICLE V

The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations, provided their teachings or practices are not contrary to public morals; and they may also be permitted to bury their dead according to their religious customs in suitable and convenient places established and maintained for the purpose, subject to the reasonable mortuary and sanitary laws and regulations of the place of burial.

ARTICLE VI

In the event of war between either High Contracting Party and a third State, such Party may draft for compulsory military service nationals of the other having a permanent residence within its territories and who have formally, according to its laws, declared an intention to adopt its nationality by naturalization, unless such individuals depart from the territories of said belligerent Party within sixty days after a declaration of war.

It is agreed, however, that such right to depart shall not apply to natives of the country drafting for compulsory military service who, being nationals of the other Party, have declared an intention to adopt the nationality of their nativity. Such natives shall nevertheless be entitled in respect of this matter to treatment no less favorable than that accorded the nationals of any other country who are similarly situated.

ARTICLE VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports, and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation. Nothing in this Treaty shall be construed to restrict the right of either High Contracting Party to impose, on such terms as it may see fit, prohibitions or restrictions designed to protect human, animal, or plant health or life, or regulations for the enforcement of revenue or police

laws, including laws prohibiting or restricting the importation or sale of alcoholic beverages or narcotics.

Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties, charges, or conditions and no prohibition on the importation of any article the growth, produce, or manufacture of the territories of the other Party, from whatever place arriving, than are or shall be imposed on the importation of any like article the growth, produce, or manufacture of any other foreign country; nor shall any duties, charges, conditions, or prohibitions on importations be made effective retroactively on imports already cleared through the customs, or on goods declared for entry into consumption in the country.

Each of the High Contracting Parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported to the territories of the other High Contracting Party than are imposed on goods exported to any other foreign country.

Any advantage of whatsoever kind which either High Contracting Party may extend by treaty, law, decree, regulation, practice, or otherwise to any article the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce, or manufacture of the other High Contracting Party.

All articles which are or may be legally imported from foreign countries into ports of the United States or are or may be legally exported therefrom in vessels of the United States may likewise be imported into those ports or exported therefrom in Norwegian vessels, without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in vessels of the United States; and, reciprocally, all articles which are or may be legally imported from foreign countries into the ports of Norway or are or may be legally exported therefrom in Norwegian vessels may likewise be imported into these ports or exported therefrom in vessels of the United States without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in Norwegian vessels.

In the same manner there shall be perfect reciprocal equality in relation to the flags of the two countries with regard to bounties, drawbacks, and other privileges of this nature of whatever denomination which may be allowed in the territories of each of the Contracting Parties, on goods imported or exported in national vessels so that such bounties, drawbacks and other privileges shall also and in like manner be allowed on goods imported or exported in vessels of the other country.

With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels, and goods of the other the advantage of every favor, privilege, or immunity which it shall have accorded to the nationals, vessels, and goods of a third State, whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege, or immunity which shall hereafter be granted the nationals, vessels, or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals, vessels, and goods.

The stipulations of this Article do not extend to the treatment which is accorded by the United States to the commerce of Cuba under the provisions of the Commercial Convention concluded by the United States and Cuba on December 11, 1902, or any other commercial convention which hereafter may be concluded by the United States with Cuba. Such stipulations, moreover, do not extend to the commerce of the United States with the Panama Canal Zone or with any of the dependencies of the United States or to the commerce of the dependencies of the United States with one another under existing or future laws.

No claim may be made by virtue of the stipulations of the present Treaty to any privileges that Norway has accorded, or may accord to Denmark, Iceland, or Sweden, as long as the same privilege has not been extended to any other country.

Neither of the High Contracting Parties shall by virtue of the provisions of the present Treaty be entitled to claim the benefits which have been granted or may be granted to neighboring States in order to facilitate short boundary traffic.

ARTICLE VIII

The nationals, goods, products, wares, and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals, goods, products, wares, and merchandise of the country with regard to internal taxes, transit duties, charges in respect to warehousing, and other facilities, and the amount of drawbacks and export bounties.

ARTICLE IX

The vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessels and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations, or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposesd on national vessels.

ARTICLE X

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

ARTICLE XI

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that nationals of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade the most favored nation treatment.

ARTICLE XII

Limited liability and other corporations and associations, whether or not for pecuniary profit, which have been or may hereafter be organized in accordance with and under the laws, National, State or Provincial, of either High Contracting Party and maintain a central office within the territories thereof, shall have their juridical status recognized by the other High Contracting Party provided that they pursue no aims within its territories contrary to its laws. They shall enjoy free access to the courts of law and equity, on conforming to the laws regulating the matter, as well for the prosecution as for the defense of rights in all the degrees of jurisdiction established by law.

The right of such corporations and associations of either High Contracting Party so recognized by the other to establish themselves in the territories of the other Party, establish branch offices and fulfill their functions therein shall depend upon, and be governed solely by, the consent of such Party as expressed in its National, State, or Provincial laws.

ARTICLE XIII

The nationals of either High Contracting Party shall enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the organization of and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, including the rights of promotion, incorporation, purchase and ownership and sale of shares and the holding of executive or official positions therein. In the exercise of the foregoing rights and with respect to the regulation or procedure concerning the organization or conduct of such corporations or associations, such nationals shall be subjected to no condition less favorable than those which have been or may hereafter be imposed upon the nationals of the most favored nation. The rights of any such corporations or associations as may be organized or controlled or participated in by the nationals of either High Contracting Party within the territories of the other to exercise any of their functions therein, shall be governed by the laws and regulations, Natonal, State or Provincial, which are in force or may hereafter be established within the territories of the Party wherein they propose to engage in business.

The nationals of either High Contracting Party shall, moreover, enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain of the other.

ARTICLE XIV

Commercial travelers representing manufacturers, merchants, and traders domiciled in the territories of either High Contracting Party shall, on their entry into and sojourn in the territories of the other Party and on their departure therefrom, be accorded the most favored nation treatment in respect of customs and other privileges and of all charges and taxes of whatever denomination applicable to them or to their samples.

If either High Contracting Party require the presentation of an authentic document establishing the identity and authority of a commercial traveler, a signed statement by the concern or concerns represented, certified by a consular officer of the country of destination, shall be accepted as satisfactory.

ARTICLE XV

There shall be complete freedom of transit through the territorial, including territorial waters, of each High Contracting Party on the routes most convenient for international transit, by rail, navigable waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries, to persons and goods coming from, going to, or passing through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law or regulations. The measures of a general or particular character which either of the High Contracting Parties is obliged to take in case of an emergency affecting the safety of the State or vital interests of the country may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this paragraph, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, or to any discrimination as regards charges, facilities, or any other matter.

Goods in transit must be entered at the proper customhouse, but they shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic.

Article XVI

Each of the High Contracting Parties agrees to receive from the other, consular officers in those of its ports, places and cities, where it may be convenient and which are open to consular representatives of any foreign country.

Consular officers of each of the High Contracting Parties shall after entering upon their duties, enjoy reciprocally in the territories of the other all the rights, privileges, exemptions, and immunities which are enjoyed by officers of the same grade of the most favored nation. As official agents, such officers shall be entitled to the high consideration of all officials, national or local, with whom they have official intercourse in the State which receives them.

The Governments of each of the High Contracting Parties shall furnish free of charge the necessary exequatur of such consular officers of the other as present a regular commission signed by the chief executive of the appointing State and under its great seal; and they shall issue to a subordinate or substitute consular officer duly appointed by an accepted superior consular officer with the approbation of his Government, or by any other competent officer of that Government, such documents as according to the laws of the respective countries shall be requisite for the exercise by the appointee of the consular function. On the exhibition of an exequatur, or other document issued in lieu thereof to such subordinate, such consular officer shall be permitted to enter upon his duties and to enjoy the rights, privileges, and immunities granted by this Treaty.

Article XVII

Consular officers, nationals of the State by which they are appointed, and not engaged in any profession, business, or trade, shall be exempt from arrest except when charged with the commission of offenses locally designated as crimes other than misdemeanors and subjecting the individual guilty thereof to punishment. Such officers shall be exempt from military billetings, and from service of any military or naval, administrative or police character whatsoever.

In criminal cases the attendance at the trial by a consular officer as a witness may be demanded by the prosecution or defense, or by the court. The demand shall be made with all possible regard for the consular dignity and the duties of the office; and there shall be compliance on the part of the consular officer.

When the testimony of a consular officer who is a national of the State which appoints him and is engaged in no private occupation for gain, is taken in civil cases, it shall be taken orally or in writing at his residence or office and with due regard for his convenience. The officer should, however, voluntarily give his testimony at the trial whenever it is possible to do so without serious interference with his official duties.

No consular officer shall be required to testify in either criminal or civil cases regarding acts performed by him in his official capacity.

Article XVIII

Consular officers, including employees in a consulate, nationals of the State by which they are appointed other than those engaged in private occupations for gain within the State where they exercise their functions shall be exempt from all taxes, National, State, Provincial, and Municipal, levied upon their persons or upon their property, except taxes levied on account of the possession or ownership of immovable property situated in, or income derived from property of any kind situated or belonging within the territories of the State within which they exercise their functions. All consular officers and employees, nationals of the State appointing them and not engaged in any profession, business, or trade, shall be exempt from the payment of taxes on the salary, fees, or wages received by them in compensation for their consular services.

Article XIX

Consular officers may place over the outer door of their respective offices the arms of their State with an appropriate inscription designating the official office. Such officers may also hoist the flag of their country on their offices, including those situated in the capitals of the two countries. They may likewise hoist such flag over any boat or vessel employed in the exercise of the consular function.

The consular offices and archives shall at all times be inviolable. They shall under no circumstances be subjected to invasion by any authorities of any character within the country where such offices are located. Nor shall the authorities under any pretext make any examination or seizure of papers or other property deposited within a consular office. Consular offices shall not be used as places of asylum. No consular officers shall be required to produce official archives in court or testify as to their contents.

When a consular officer is engaged in business of any kind within the country which receives him, the archives of the consulate and the documents relative to the same shall be kept in a place entirely apart from his private or business papers.

Upon the death, incapacity, or absence of a consular officer having no subordinate consular officer at his post, secretaries or chancellors, whose official character may have previously been made known to the Government of the State where the consular function was exercised, may temporarily exercise the consular function of the deceased or incapacitated or absent consular officer; and while so acting shall enjoy all the rights, prerogatives, and immunities granted to the incumbent.

ARTICLE XX

Consular officers of either High Contracting Party may, within their respective consular districts, address the authorities concerned, National, State, Provincial, or Municipal, for the purpose of protecting the nationals of the State by which they are appointed in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consular general or the consular officer stationed at the capital may apply directly to the Government of the country.

ARTICLE XXI

Consular officers may, in pursuance of the laws of their own country, take, at any appropriate place within their respective districts, the depositions of any occupants of vessels of their own country, or of any national of, or of any person having permanent residence within the territories of, their own country. Such officers may draw up, attest, certify, and authenticate unilateral acts, deeds, and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party. They may draw up, attest, certify, and authenticate written instruments of any kind purporting to express or embody the conveyance or encumbrance of property of any kind within the territory of the State by which such officers are appointed, and unilateral acts, deeds, testamentary dispositions, and contracts relating to property situated, or business to be transacted within, the territories of the State by which they are appointed, embracing unilateral acts, deeds, testamentary dispositions, or agreements executed solely by nationals of the State within which such officers exercise their functions.

Instruments and documents thus executed and copies and translation thereof, when duly authenticated under his official seal by the consular officer shall be received as evidence in the territories of the Contracting Parties as original documents or authenticated copies, as the case may be, and shall have the same force and effect as if drawn by and executed before a notary or other public officer duly authorized in the country by which the consular officer was appointed; provided, always that such documents shall have been drawn and executed in conformity to the laws and regulations of the country where they are designed to take effect.

ARTICLE XXII

A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided, however, that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws.

When an act committed on board of a private vessel under the flag of the State by which the consular officer has been appointed and within the territorial waters of the State to which he has been appointed constitutes a crime according to the laws of that State, subjecting the person guilty thereof to punishment as a criminal, the consular officer shall not exercise jurisdiction except in so far as he is permitted to do so by the local law.

A consular officer may freely invoke the assistance of the local police authorities in any matter pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.

A consular officer may appear with the officers and crews of vessels under the flag of his country before the judicial authorities of the State to which he is appointed for the purpose of observing the proceedings and rendering such assistance as may be permitted by the local laws.

Article XXIII

In case of the death of a national of either High Contracting Party in the territory of the other without having in the territory of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the State of which the deceased was a national of the fact of his death, in order that necessary information may be forwarded to the parties interested.

Likewise in case of the death of a resident of either of the High Contracting Parties in the territory of the other Party from whose remaining papers which may come into the possession of the local authorities, it appears that the decedent was a native of the other High Contracting Party, the proper local authorities shall at once inform the nearest consular officer of that Party of the death.

In case of the death of a national of either of the High Contracting Parties without will or testament whereby he has appointed testamentary executors, in the territory of the other High Contracting Party, the consular officer of the State of which the deceased was a national and within whose district the deceased made his home at the time of death, shall, so far as the laws of the country permit and pending the appointment of an administrator and until letters of administration have been granted, be deemed qualified to take charge of the property left by the decedent for the preservation and protection of the same. Such consular officer shall have the right to be appointed as administrator within the discretion of a tribunal or other agency controlling the administration of estates provided the laws of the place where the estate is administered so permit.

Whenever a consular officer accepts the office of administrator of the estate of a deceased countryman, he subjects himself as such to the jurisdiction of the tribunal or other agency making the appointment for all necessary purposes to the same extent as a national of the country where he was appointed.

Article XXIV

A consular officer of either High Contracting Party shall within his district have the right to appear personally or by delegate in all matters concerning the administration and distribution of the estate of a deceased person under the jurisdiction of the local authorities for all such heirs or legatees in said estate, either minors or adults, as may be non-residents and nationals of the country represented by the said consular officer, with the same effect as if he held their mandate to repersent them, unless such heirs or legatees themselves have appeared, either in person or by duly authorized representative.

A consular officer of either High Contracting Party may in behalf of his non-resident countrymen collect and receipt for their distributive shares derived from estates in process of probate or accruing under the provisions of so-called Workingmen's Compensation Laws or other like statutes, for transmission through channels prescribed by his Government to the proper distributees.

Article XXV

A consular officer of either High Contracting Party shall have the right to inspect within the ports of the other High Contracting Party with his consular district, the private vessels of any flag destined or about to clear for ports

of the country appointing him in order to observe the sanitary conditions and measures taken on board such vessels, and to be enabled thereby to execute intelligently bills of health and other documents required by the laws of his country, and to inform his Government concerning the extent to which its sanitary regulations have been observed at ports of departure by vessels destined to its ports, with a view to facilitating entry of such vessels therein.

In exercising the right conferred upon them by this Article, consular officers shall act with all possible despatch and without unnecessary delay.

Article XXVI

Each of the High Contracting Parties agrees to permit the entry free of all duty of all furniture, equipment and supplies intended for official use in the consular offices of the other, and to extend to such consular officers of the other and their families and suites as are its nationals, the privilege of entry free of duty of their baggage and all other personal property, accompanying the officer, his family or suite, to his post, provided, nevertheless, that no article, the importation of which is prohibited by the law of either of the High Contracting Parties, may be brought into its territories. Personal property imported by consular officers, their families or suites during the incumbency of the officers shall be accorded on condition of reciprocity the customs privileges and exemptions accorded to consular officers of the most favored nation.

It is understood, however, that this privilege shall not be extended to consular officers who are engaged in any private occupation for gain in the countries to which they are accredited, save with respect to Government supplies.

Article XXVII

All proceedings relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the consular officer of the country to which the vessel belongs and within whose district the wreck may have occurred, or by some other person authorized thereto by the law of that country. Pending the arrival of such officer, who shall be immediately informed of the occurrence, or the arrival of such other person, whose authority shall be made known to the local authorities by the consular officer, the local authorities shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked and to carry into effect the arrangements made for the entry and exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any customhouse charges, unless it be intended for consumption in the country where the wreck may have taken place.

The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

Article XXVIII

Subject to any limitation or exception hereinabove set forth, or hereafter to be agreed upon, the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land, water, and air over which the Parties respectively claim and exercise dominion as sovereign thereof, except the Panama Canal Zone and Svalbard.

Article XXIX

The present Treaty shall remain in full force for the term of three years from the date of the exchange of ratifications, on which date it shall begin to take effect in all of its provisions.

If within one year before the expiration of the aforesaid period of three years neither High Contracting Party notifies to the other an intention of modifying by change or omission any of the provisions of any of the Articles in this Treaty or of terminating it upon the expiration of the aforesaid period, the Treaty shall remain in full force and effect after the aforesaid period and until one year

from such a time as either of the High Contracting Parties shall have notified to the other an intention of modifying or terminating the Treaty.

The present Treaty shall, from the date of the exchange of ratifications, be deemed to supplant, as between the United States and Norway, the Treaty of Commerce and Navigation concluded by the United States and the King of Norway and Sweden on July 4, 1827.

ARTICLE XXX

The present Treaty shall be ratified and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the same and have affixed their seals thereto.

Done in duplicate, in the English and Norwegian languages, at Washington, this 5th day of June, 1928.

FRANK B. KELLOGG. [SEAL]
H. H. BACHKE. [SEAL]

ADDITIONAL ARTICLE

The United States of America and the Kingdom of Norway by the undersigned, the Secretary of State of the United States and the Minister of Norway at Washington, their duly empowered Plenipotentiaries, agree as follows:

Notwithstanding the provision in the third paragraph of Article XXIX of the Treaty of Friendship, Commerce and Consular Rights between the United States and Norway, signed June 5, 1928, that the said treaty shall from the date of the exchange of ratifications thereof be deemed to supplant as between the United States and Norway the treaty of Commerce and Navigation concluded by the United States and the King of Norway and Sweden on July 4, 1827, the provisions of Article I of the latter treaty concerning the entry and residence of the nationals of the one country in the territories of the other for purposes of trade shall continue in full force and effect.

The present additional Article shall be considered to be an integral part of the treaty signed June 5, 1928, as fully and completely as if it had been included in that treaty, and as such integral part shall be subject to the provisions in Article XXIX thereof in regard to ratification, duration, and termination concurrently with the other Articles of the treaty.

Done, in duplicate, in the English and Norwegian languages, at Washington this 25th day of February, 1929.

FRANK B. KELLOGG. [SEAL]
H. H. BACHKE. [SEAL]

AND WHEREAS the said treaty and the said additional article have been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of Washington on the thirteenth day of September, one thousand nine hundred and thirty-two;

NOW, THEREFORE, be it known that I, Herbert Hoover, President of the United States of America, have caused the said treaty and the said additional article to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this fifteenth day of September in the year of our Lord one thousand nine hundred and thirty-two, and of the Independence of the United States of America the one hundred and fifty-seventh.

[SEAL] HERBERT HOOVER.

By the President:

HENRY L. STIMSON,
Secretary of State.

EXCHANGE OF NOTES CONCERNING THE TARIFF TREATMENT OF NORWEGIAN SARDINES

The Norwegian Minister (Bachke) to the Secretary of State (Kellogg)

ROYAL NORWEGIAN LEGATION,
Washington, D. C., June 5, 1928.

MR. SECRETARY OF STATE:

During the negotiations relating to the conclusion of the Treaty of Friendship, Commerce and Consular Rights, which to-day has been signed, I was given to understand that under the present tariff laws of the United States Norwegian Sardines are accorded the same tariff treatment as sardines imported from any other country and that such equality of treatment would be continued under the most favored nation provision of the Treaty. Upon the request of my Government I have the honor to inform Your Excellency that my Government would appreciate very much to receive, if this be found possible, a communication from Your Excellency, stating that the tariff treatment of the Norwegian Sardines is as above mentioned.

Please accept, Mr. Secretary of State, the renewed assurances of my highest consideration.

H. H. BACHKE.

HIS EXCELLENCY
HONORABLE FRANK B. KELLOGG,
Secretary of State,
etc. etc. etc.

The Secretary of State (Kellogg) to the Norwegian Minister (Bachke)

DEPARTMENT OF STATE,
Washington, June 5, 1928.

SIR:

I have the honor to acknowledge the receipt of your note of this day's date, stating that during the negotiations relating to the conclusion of the Treaty of Friendship, Commerce and Consular Rights between the United States and Norway, which you have this day signed with me, you were given to understand that under the present tariff laws of the United States, Norwegian sardines are accorded the same tariff treatment as sardines imported from any other country, and that such equality of treatment would be continued under the most-favored-nation provision of the treaty.

In reply I am happy to confirm the correctness of your understanding, as above recited, of the equality of treatment which is now accorded under the tariff laws of the United States, and will continue to be accorded under the most-favored-nation provision of the treaty, to Norwegian sardines.

Accept, Sir, the renewed assurances of my highest consideration.

FRANK B. KELLOGG.

MR. HALVARD H. BACHKE,
Minister of Norway.

Senator WALSH. There is also here copy of a communication from Senator Townsend to the Bureau of Customs, dated February 7, 1938. I do not know whether that has been called to your attention, Mr. Johnson?

Mr. JOHNSON. Yes, sir.

Senator WALSH. Is it necessary to have the letter inserted in the record? I assume the reason for the inquiry is to have some definite information as to the possible construction of prior drafts of the act. Is that it?

Mr. JOHNSON. I understand that to be the case.

Senator WALSH. This letter may be printed in the record of the proceedings, and the Treasury representatives are requested to report to the subcommittee concerning Senator Townsend's inquiry.

(The letter is as follows:)

WASHINGTON, D. C., *February 7, 1938.*

BUREAU OF CUSTOMS,
Treasury Department, Washington, D. C.

GENTLEMEN: Reference is made to H. R. 8099. I have been advised that the Treasury Department representatives have stated that the purpose of paragraph 2 of subsection (a), section 3, is to remedy the situation whereby empty perfume bottles, marked of foreign origin, are filled with domestic perfume after importation. Under the language it is possible for the Government to extend the use of this paragraph far beyond the intention outlined.

Under some paragraphs of the tariff act, and I refer specifically to paragraph 367, specific methods of marking articles are provided.

I would like to have the Treasury Department advise me for the record whether, if the language of paragraph 2 is adopted, it is intended to elaborate upon paragraph 367 in any manner.

I am further informed that the Treasury Department is of the opinion that paragraph 2 (a) will not give the Treasury power to change the manner of marking now practiced under paragraph 367. Is that correct?

Very truly yours,

JOHN G. TOWNSEND, Jr.

Will the Treasury have any objection to an amendment which would exempt articles dutiable under paragraph 367 of the tariff act, from the provisions of the above-mentioned subsection of H. R. 8099? This, provided, of course, that satisfactory language is prepared.

Mr. JOHNSON. The letter raises the question as to the possible interpretation of subdivision 2, beginning on line 22, page 2. A similar question has been raised by two witnesses who have appeared before this committee and have expressed some objection to a possible requirement that articles of domestic manufacture would be required to be marked to show the origin of foreign components. I believe that that would be possible under this section to require marking on articles dutiable under paragraph 367 in addition to the marking prescribed by that paragraph. Whether this should be the case seems to be a question of policy rather than one of administrative difficulties. However, a special exception for articles dutiable under paragraph 367 would discriminate against other articles subject to the same general considerations. I may add that the perfume-bottle situation mentioned in Senator Townsend's letter is only one of many similar ones in which lack of adequate marking may result in a mistake of a purchaser as to the origin of an article or of one or more of its components.

Senator WALSH. I desire to place in the record an amendment which I plan to offer today to the pending bill, together with a letter from the Acting Secretary of the Treasury with reference to this amendment.

(The amendment and letter are as follows:)

Amendments to H. R. 8099, by Senator Walsh, to amend certain administrative provisions of the Tariff Act of 1930, and for other purposes, viz: On page 35, line 10, after "29", insert "(a)".

On page 35, between lines 13 and 14, insert the following:

"(b) Paragraph 1115 (b) of the Tariff Act of 1930 (U. S. C., 1934 edition, title 19, section 1001, par. 1115 (b)), as modified by the President's proclamation of March 16, 1931 (Proclamation No. 1941, 47 Stat. 2438), is hereby amended by striking out the words 'manufactured wholly or in part of wool felt' and inserting in lieu thereof the words 'wholly or in chief value of wool but not knit or crocheted nor made in chief value of knit, crocheted, or woven material,'."

TREASURY DEPARTMENT,
Washington, January 27, 1938.

Hon. PAT HARRISON,
Chairman, Committee on Finance,
United States Senate.

DEAR MR. CHAIRMAN: Further reference is made to a letter received from the clerk, Committee on Finance, United States Senate, dated January 14, 1938, enclosing a copy of an amendment to H. R. 8099 intended to be proposed by Senator Guffey, and requesting a statement of this Department's views on the proposed legislation.

The proposed legislation, if enacted into law, would amend paragraph 1115 (b) of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 1115) by deleting therefrom the word "felt."

Paragraph 1115 (b) of the Tariff Act of 1930 reads as follows:

"Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; and, in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles) 25 cents per article."

In a proclamation, effective April 15, 1931, T. D. 44715, the President reduced the rate of 75 percent ad valorem specified in that paragraph to 55 cents ad valorem and the rate of 25 cents per article to 12½ cents per article. A copy of T. D. 44715 is enclosed.

The proposal now under consideration would, if accepted, extend the classification provided in the subparagraph above quoted to articles of the characted described therein, if manufactured wholly or in part of wool, whether or not made by the felting process. It has been the practice to classify under this subparagraph hat bodies or shapes consisting of wool felted in the process of manufacture. In a recent decision, published as (1937) T. D. 49335, the United States Court of Customs and Patent Appeals reversed a decision of the United States Customs Court and held that in the production of certain wool hat bodies, wool felt did not exist as an entity until the completion of the hat bodies and that accordingly such hat bodies were not "manufactured wholly or in part of wool felt." The result of this decision was to sustain the importer's protest claiming classification under paragraph 1115 (a) of the Tariff Act of 1930 covering "clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool." Copies of the decisions mentioned are herewith enclosed for your information.

If the word "felt" is deleted but no other change is made in paragraph 1115 (b), articles such as those which were the subject of Treasury Decision 49335, supra, would be classifiable under the amended paragraph 1115 (b) but other finished and unfinished headwear, wholly or in part of wool, would also be classifiable under the amended provision. This is particularly the case with respect to knit or crocheted headwear, wholly or in chief value of wool, which is now provided for in paragraph 1114 (d) of the Tariff Act of 1930 (U. S. C., title 19, sec. 1001, par. 1114). Certain proclamations of the President (1932), Treasury Decision 45756, and (1936) Treasury Decision 48316 have been based upon this present classification. The proclamation in Treasury Decision 48316 was made pursuant to a trade agreement entered into between United States and France in connection with which the United States obligated itself not to assess duties of more than 44 cents per pound and 30 percent ad valorem on "knit or crocheted wool hats, berets, etc., valued at not more than $2 per pound." Interference with paragraph 1114 (d) and these proclamations and with the application heretofore given to paragraph 1115 (a) might be avoided by deleting from paragraph 1115 (b) the words "manufactured wholly or in part of wool felt" and inserting in lieu thereof "wholly or in chief value of wool but not knit or crocheted nor made in chief value of knit, crocheted, or woven material." On the basis of the information presently available in the Department, it is believed that this change would make paragraph 1115 (b) applicable to all the articles heretofore classified thereunder without extending its application to any substantial volume of other articles.

In view of the modification of rates of duty affected by the proclamation mentioned in the third paragraph of this letter and in order to prevent any uncertainty as to the application of the proclaimed rates if the law is amended, it would seem to be appropriate to insert a comma and "as modified by the President's proclamation of March 16, 1931 (Proclamation No. 1941 47 Stat.

pt. 2, 2438), immediately after the final parenthesis of the code citation in the proposed amendment as now drafted.

If the desired amendment is framed in the manner suggested, the Department does not believe that its enactment would result in any new administrative difficulties.

Very truly yours,

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

(T. D. 48700)

Wool felt hat bodies—Construction, paragraph 1115 (b), Tariff Act of 1930—Legislative intent

COHN & LEWIS *v.* UNITED STATES

Where by the use of a rule of construction a result is arrived at which is contrary to the legislative intent, the rule of construction must yield. *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. 285, T. D. 46078, cited.

Held that the provision in paragraph 115 (b), Tariff Act of 1930, for "bodies * * * for hats * * * manufactured wholly or in part of wool felt," applies to wool felt hat bodies manufactured by processes at no stage of which wool felt existed as a separate and distinct entity apart from the hat body, examination of the legislative history of the provision showing such to be the intent of the Congress in its enactment.

United States Customs Court, First Division

Protest 495351–G against the decision of the collector of customs at the port of New York

[Judgment for defendant.]

(Decided December 9, 1936)

Puckhafer & Rode (*John R. Rafter* of counsel) for the plaintiffs.
Joseph R. Jackson, Assistant Attorney General (*Marcus Higginbotham, Jr.*, and *Ralph Folks*, special attorneys), for the defendant.
Lamb & Lerch, amici curiae.

Before MCCLELLAND, SULLIVAN, and BROWN, Judges; SULLIVAN, J., concurring; BROWN, J., dissenting

MCCLELLAND, Presiding Judge: This case involves the classification and consequent assessment of duty on wool felt hat bodies. Duty was assessed thereon by the collector under the provisions of paragraph 1115 (b) of the Tariff Act of 1930, which, so far as pertinent, reads:

"Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; * * *."

The foregoing rates were decreased by Presidential proclamation on March 23, 1931, but the hat bodies in issue were imported before the effective date of such decreases.

While numerous claims are made in the protest, that evidently relied upon is the one for duty at the rate of 33 cents per pound and 45 per centum ad valorem under paragraph 1115 (a), which, so far as pertinent, reads:

"Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool, valued per centum ad valorem; * * *"

When the protest was called for trial it was originally submitted on the following stipulation of counsel:

"1. That the merchandise covered by the above entitled protest consists of wool felt in the form of bodies for hats valued at not more than $4.00 per pound.

"2. That said merchandise is the same in all material respects as the merchandise which was the subject of decision by the United States Court of Customs and Patent Appeals in Suit No. 3392—*Henry Pollak, Inc.*, v. *United States*, 19 C. C. P. A. 215, and in Suit No. 3731—*Henry Pollak, Inc.*, v. *United States*, T. D. 47066, the records of which cases are incorporated into the record in the above entitled case.

"3. That Exhibit 1 in said Suits Nos. 3392 and 3731 truly represents the merchandise covered by the above entitled protest.

"4. That said bodies for hats were made of the same kind of material and by the same processes of manufacture as Exhibit 1 in said Suits Nos. 3392 and 3731."

Prior to the disposition of the case by the courts, however, a motion was made by counsel for the Government to reopen the submission, which was duly granted.

No witnesses were called to testify on behalf of the plaintiffs after the reopening of the submission, but six were called on behalf of the defendant. The first of these was William H. Rowe, Jr. The basis of his familiarity with hat bodies, such as Exhibit 1 in suit 3731, the record in which case, including the exhibit, is in evidence in the case at bar, he stated to be that he had spent some time in Europe, more particularly in Italy, and in his buying capacity had visited the factories which produced hat bodies similar to those in issue. He also visited three factories in the United States, and had observed the production of articles like Exhibit 1 in all of these factories.

Detailing the processes leading up to hat bodies in the condition of Exhibit 1 from the very beginning, he stated that first the wool mix is put into what is termed a carding machine which combs and cleans the wool and brings it to the form of a wool mattress. It is then put into a second carding machine which produces a thin veil which is wound around cone-shaped wooden blocks. That process results in what is called the carded form of wool, represented by Illustrative Exhibit A. The next step is a hardening process which is the first felting operation, the result of which is shown by Illustrative Exhibit B. The third operation is a shrinking and tightening process, the result of which is illustrated by Illustrative Exhibit C. The fourth operation the witness called the "bumping" operation, the effect of which results in further shrinking and tightening. The result of that process is illustrated by Illustrative Exhibit D. The next process is the dyeing process, which is illustrated by Illustrative Exhibit E.

Following the dyeing operation the next process is a further bumping or shrinking process, the result of which is shown in Illustrative Exhibit F. The next process is a final tightening operation, described by the witness as "the final felting operating," the result of which is shown in Illustrative Exhibit G. It will be noted that at this stage the article is still conical in shape. The next process the witness described as "tip stretching." Upon being asked what the process did to the article he replied, "That starts to form the felt." The result of this formulation is shown in Illustrative Exhibit H, which has passed beyond the conical shape shown in Illustrative Exhibit G and has taken on the form of a hat crown. In the next process the witness stated that the felt is pulled on a wooden block to give it form, and the effect of this process is shown in Illustrative Exhibit I. Following the condition represented by Illustrative Exhibit I the felt is dried and then shaved or pounded. This last described process brings the hat body to the condition represented by Illustrative Exhibit J, which by comparison is substantially the same as Exhibit 1 which concededly represents the imported merchandise.

In all of its main features the testimony of Mr. Rowe is confirmed by the five additional witnesses called to testify for the defendant, and agrees with that given by the witness Ferretti in the *Pollak* case, suit 3731, reported in 22 C. C. P. A. 81, T. D. 47066, *supra*, so that the question to be determined is whether or not the collector was justified in his construction of the law upon which he decided that these hat bodies were manufactured of wool felt.

It is not contended by either side that the decisions of the Court of Customs and Patent Appeals in the *Pollak* cases are controlling of the issue here presented, since those cases involved a different issue and arose during the life of the Tariff Act of 1922 wherein the paragraph involved was couched in different language.

The contention of the plaintiffs herein is that the hat bodies involved were not manufactured of wool felt, inasmuch as at no time prior to the beginning of the processes of production of the hat bodies was the material wool felt in existence as a separate and distinct entity.

In support of their contention plaintiffs have cited, among others, the cases of *United States* v. *Macy & Co.*, 7 Ct. Cust. Appls. 8, T. D. 36256, and *J. J. Gavin & Co., et al.* v. *United States*, T. D. 47985, both of which involved issues similar to that in the case at bar and the decisions in which were based upon the general rule of construction in customs law that the words "manufactured of" or "made of" presuppose that the material of which an article is manufactured was a separate and distinct entity at the time it was manufactured into the article.

I would be inclined to follow this rule in the case at bar were it not for the fact that my attention has been called to what appears to be a contrary legislative intent with regard to paragraph 1115 (b) here under consideration. In

United States v. *Olay Adams Co., Inc.*, 20 C. C. P. A. 285, T. D. 46078, it was aptly stated that—

"All rules of construction must yield if the legislative intent is shown to be counter to the apparent intent indicated by such rule. The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent."

As before stated, in the tariff revision of 1930 a change was made in the provisions of paragraph 1115 as embodied in the Tariff Act of 1922 by making a special provision in the new act, among other things, for hat bodies manufactured of wool felt. I think we have here an instance where reasonable argument may be made in support of the respective contentions of the parties to the suit in the absence of reference to the history of the proceedings before the Ways and Means Committee and the Congress which resulted in the above change.

In the volume entitled "Tariff Readjustment—1929, Hearings before the Committee on Ways and Means of the House of Representatives, Vol. XI, Schedule 11," beginning at page 6482 under the caption "Wool Felt Hats and Hat Bodies", I find the statements, made before the committee considering the proposed revision, of representatives of the domestic manufacturers of wool felt hats and wool felt hat bodies. A higher rate of duty upon wool felt hat bodies than had been assessable under the preceding Tariff Act of 1922 was sought by these interests, and to this end they requested that separate provision be made in the proposed tariff act for wool felt hats and wool felt hat bodies. This is shown in their brief found at page 6491 under the caption "Brief of Manufacturers of Wool Felt Hats and Wool Felt Hat Bodies" as follows:

* * * * * * *

"SUGGESTED CHANGES IN CLASSIFICATION AND RATES

"A. The elimination of wool felt hats and wool felt hat bodies from the present classification as "Clothing and articles of wearing apparel," by the changing of the phraseology in the existing law by the insertion of the words "not specially provided for" in paragraph 1115 of Section 11, so that paragraph 1115 as so amended will read:

"'PAR. 1115. Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, composed wholly or in chief value of wool, not specially provided for; valued at not more than $2 per pound etc., * * * [balance of paragraph unchanged.]'

"B. Making special provision for wool felt hats and wool felt hat bodies by a separate classification and the establishment of rates of duty under the appropriate schedule and as a new and separate paragraph of the dutiable list, as follows:

"SCHEDULE

"'PAR. ——. Hats, caps, capelines, bonnets, beret, and hoods for men's, women's, boys' and children's wear, trimmed or untrimmed, including bodies, hoods, plateaux, forms or shapes for hats, caps, capelines, bonnets, or beret, composed wholly or in chief value of wool, valued at not more than $1.35 per pound, 45 cents per pound; valued at more than $1.35 and not exceeding $1.55 per pound, 40 cents per pound; valued at more than $1.55 per pound, 35 cents per pound; and in addition thereto, on all the foregoing, if weighing not more than 30 ounces to the dozen, 70 percent ad valorem; if weighing more than 30 ounces to the dozen, 65 percent ad valorem, and, in addition thereto, on all the foregoing, if pulled or stamped, or blocked or trimmed, $3 per dozen.'"

It is manifest that while the Congress appears to have complied with the request of the manufacturers the proposed paragraph above quoted was not adopted, either as to language or as to rates, and a significant fact in that respect is that the proposed paragraph did not contain any provision for wool *felt* hat bodies, although the expressed intention of the domestic interests was to seek greater protection for this class of goods. That omission was evidently noted by the committee, since in paragraph 1115 (b) as reported provision was made or duty on articles manufactured wholly or in part of wool *felt* in conformity with the request made by the manufacturers. The Ways and Means Committee in its report to the House of Representatives explained the changes made in the proposed tariff act from the provisions of the Tariff Act of 1922 embodied this significant paragraph:

"*Paragraph 1115:* The committee has made a change in the compensatory duty on clothing proportionate to the change made in the duty on wool. No change is made in the protective rates *except for wool-felt hats and bodies which are specifically provided for.*" [Italics added.]

and it is important to note that paragraph 1115 (b) as reported by the committee was later enacted as part of the Tariff Act of 1930 without change by the Congress.

That the wool felt hat bodies on which the domestic interests sought additional protection were such as are here in issue, that is to say, were manufactured by the identical processes by which the hat bodies in issue were manufactured, I believe is apparent from the fact that such processes are set forth not only in the brief filed with the committee in support of the changes requested, but were also minutely detailed in the verbal statement made by George W. Bollman, representing one of the domestic manufacturers speaking before the committee. These descriptions are in substantial agreement with the details of manufacture concurred in by the witnesses on the trial of this case.

It may be said, therefore, that the wool felt hat bodies for which the domestic manufacturers sought protection and those which the committee had in mind when they made their report and those to which the Congress intended to extend protection were the same as those in issue, and I am convinced that the intent of Congress in framing paragraph 1115 (b) was that wool felt hat bodies such as those under consideration were to be subject to the rates of duty assessed by the collector. To hold otherwise, in my opinion, would be in effect to nullify the evident intent of Congress.

The protest is overruled and the decision of the collector is affirmed. Judgment will be issued accordingly.

CONCURRING OPINION

SULLIVAN, Judge: This cause involves subdivision (b) of paragraph 1115 of the Tariff Act of 1930. This subdivision is new to the present tariff act, and was not embraced within paragraph 1115 of the Tariff Act of 1922, which was the prototype of paragraph 1115 (a) of the Tariff Act of 1930.

Subdivision (b) of paragraph 1115 is as follows:

"(b) Bodies, hoods, forms, and shapes for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; and, in addition thereto, on the foregoing, if and 75 per centum ad valorem; and, in addition thereto, on all the foregoing, if berets, and similar articles), 25 cents per article."

Subdivision (b), *supra*, being a new provision, the holdings of this court and our appellate court in *Pollak* v. *United States*, Abstract 24422, 63 Treas. Dec. 1592, and 22 C. C. P. A. 81, T. D. 47066, are not applicable.

The question directly presents itself—What is the meaning of the term "manufactured wholly or in part of wool felt"? The meaning thereof is clear, and it is not necessary for us to go into the history of the enactment to ascertain what private interests wished to have placed in the tariff act, and whether or not Congress enaced such wish into law. We must take the statute as it is written. In my judgment it is not necessary to thumb the Congressional Record to ascertain from arguments of members of Congress, testimony of private individuals, and reports of Tariff Commissions what the facts are. The facts in this case were disclosed in open court before three judges of the United States Customs Court, and we must decide this case on the record there made. It is only in exceptional cases that legislative intent may be determined by studying the history of the legislation. The term "manufactured wholly or in part of wool felt" indicates to my mind a material already in existence, namely, wool felt, and that hat bodies made therefrom are a manufacture of wool felt, dutiable under paragraph 1115 (b), and not as claimed by the plaintiffs.

This term is clear and unambiguous, and does not need any extraneous aid to arrive at its meaning.

The action of the collector in assessing duty on this merchandise at the rates provided in paragraph 1115 (b) was correct, and his judgment should be affirmed. I concur in the conclusion of Judge McClelland.

See my concurring opinion and authorities cited in *Noble* v. *United States*, T. D. 48650, 70 Treas. Dec. ——.

DISSENTING OPINION

BROWN, Judge: In this case the merchandise, hat bodies, was assessed for duty under paragraph 1115 (b), Tariff Act of 1930, as wearing apparel manufactured wholly or in part of felt at 40 cents per pound and 75 per centum ad valorem.

They are claimed to be dutiable at 33 cents per pound and 45 per centum ad valorem under paragraph 1115 (a), act of 1930.

This issue was determined in T. D. 47985, November 6, 1935 (not appealed), where it was held that in order to be "manufactured of felt" within the meaning of that tariff term in paragraph 1115 (b) felt must first be made as a distinct material, and subsequently manufactured into the articles "hat bodies."

While the process of manufacture here is different, the material "felt" is not first produced here any more than it was in the manufacture of the articles considered in T. D. 47985; therefore, the question of law as applied to the facts is identical. Nor does the evidence introduced upon the reopening of the case for further testimony change the legal situation in any particular. Such proof did not show that the material "felt' was first produced and afterward manufactured into hat bodies.

Consequently, following T. D. 47985, the protest should be sustained on the claim for classification under paragraph 1115 (a), act of 1930, at 33 cents per pound and 45 per centum ad valorem.

Judgment should issue accordingly.

DECISIONS OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

(T. D. 49335)

Hat bodies

COHN & LEWIS *v.* UNITED STATES (No. 4071)

1. WOOLEN HAT SHAPES.

Certain woolen hat shapes, stipulated to consist "of wool felt in the form of bodies for hats, valued at not more than $4 per pound," the merchandise being the same in all material respects as the merchandise involved in *Henry Pollak, Inc.*, v. *United States*, 19 C. C. P. A. (Customs) 215, and *Henry Pollak, Inc.*, v. *United States*, 22 C. C. P. A. (Customs) 81 (which cases arose under the Tariff Act of 1922), are not "wool felt wearing apparel" under paragraph 1115 (b), Tariff Act of 1930, as classified by the collector, the court being of the opinion that wool felt did not exist as an entity until the completion of the hat forms, and hence that the hat forms in issue were not "manufactures wholly or in part of wool felt," under the facts and the authorities cited in the case.

2. MADE OF—MANUFACTURED OF.

It has been a uniform and well-settled holding of this court that the language "made of" or "manufactured of" presupposes that the material of which the article is made or manufactured exists before the article itself comes into existence.

3. STATUTORY CONSTRUCTION.

If the language of a statute be plain and unambiguous, the law should be followed as written and it speaks for itself. Where it is so spoken plainly, no need of rules of construction is present, and recourse to the proceedings of the Congress and the committee thereof having the legislation in charge is unnecessary.

4. PARAGRAPH 1115 IS NOT AMBIGUOUS.

There is no ambiguity in the language which the Congress used in rewriting paragraph 1115 in the Tariff Act of 1930. It used language which has been passed upon by this court for twenty-five years, and of which the Congress must have been fully conversant. It was language which was known to the profession and in the business world, and no difficulty need be had in understanding it.

United States Court of Customs and Patent Appeals, November 22, 1937

APPEAL from United States Customs Court, T. D. 48700

[Reversed and remanded.]

Puckhafer & Rode (*John R. Rafter* of counsel) for appellant.

Joseph P. Tumulty, Black, Varian & Simon (*John Walsh, Alfred W. Varian*, and *Herbert M. Simon* of counsel) *amici curiae* and on behalf of various importers.

Joseph R. Jackson, Assistant Attorney General (*Ralph Folks* and *Joseph F. Donohue*, special attorneys, of counsel), for the United States.

Lamb & Lerch (*J. G. Lerch* of counsel) *amici curiae* and on behalf of the United States.

[Oral argument October 13, 1937, by Mr. Rafter, Mr. Walsh, Mr. Folks, and Mr. J. G. Lerch]

Before GRAHAM, Presiding Judge, and BLAND, HATFIELD, GARRETT, and LENROOT, Associate Judges

PER CURIAM:[1]

The appellant imported certain woolen hat shapes at the port of New York under the Tariff Act of 1930, which the collector classified as "wool felt wearing apparel," under paragraph 1115 (b) of said act. The importer protested, claiming the goods to be dutiable under paragraph 1114 (d) as outerwear and articles wholly or in chief value of wool, or, alternatively, as clothing and articles of wearing apparel, wholly or in chief value of wool, under paragraph 1115 (a), or as pile fabrics, finished or unfinished, in chief value of wool, under paragraph 1110, or as felts, not woven, in chief value of wool, under paragraph 1112, or as manufactures in chief value of wool under paragraph 1120 of said act.

On the hearing before the United States Customs Court, the importer relied upon the claim that the merchandise was dutiable under paragraph 1115 (a) at 33 cents per pound and 45 per centum ad valorem.

Said paragraph 1115 is as follows:

"PAR. 1115. (a) Clothing and articles of wearing apparel of every description, not knit or crocheted, manufactured wholly or in part, wholly or in chief value of wool, valued at not more than $4 per pound, 33 cents per pound and 45 per centum ad valorem; valued at more than $4 per pound, 50 cents per pound and 50 per centum ad valorem.

"(b) Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, 40 cents per pound and 75 per centum ad valorem; and, in addition thereto, on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), 25 cents per article."

The parties stipulated the records in No. 3731, *Henry Pollak, Inc.*, v. *United States*, 19 C. C. P. A. (Customs) 215, T. D. 46324, and *Henry Pollak, Inc.*, v. *United States*, 22 C. C. P. A. (Customs) 81, T. D. 47066, into the record, and it was further stipulated that the merchandise in both the cited cases was the same in all material respects as the merchandise here involved.

It was also stipulated by the parties that the merchandise covered by the protest in this case "consists of wool felt in the form of bodies for hats, valued at not more than $4 per pound."

After the submission on stipulation the Government made a motion to restore the cause to the calendar for the purpose of taking further testimony, and this motion was allowed. Thereupon six witnesses were called and testified on behalf of the Government.

There was a division of opinion among the judges of the First Division of the United States Customs Court, which heard the case. Presiding Judge McClelland was of opinion that the protest of the importer should be overruled. In his separate opinion he held that he would be inclined to agree with the importer that the material of which the imported merchandise was composed had never been wool felt, as a separate entity, and that, therefore, the imported goods were not bodies and shapes manufactured in whole or in part of wool felt under paragraph 1115 (b), were he not constrained to hold otherwise in view of the legislative history of the particular provision, which, in his view of the matter, made it necessary to hold that the congressional intent plainly was to the contrary. Judge Sullivan agreed with Judge McClelland that the protest should be overruled. He, however, thought the statutory language was unambiguous and no recourse should be had to legislative history for construction. Judge Brown dissented and was of opinion that the protest should be sustained under paragraph 1115 (a).

Judgment was accordingly entered overruling the protest and the importer has appealed.

From the incorporated records, and from the testimony, including samples and photographs in this case, we are able to get a good understanding of the method of manufacture of the imported articles. The facts as hereinafter stated are largely established by the testimony of William S. Rowe, Jr., a wit-

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[1] The opinion in this case was prepared by the late Presiding Judge Graham and adopted by the court after his death.

ness for the Government. The basic material is wool and noils mixed. This wool mixture is first put into a mattress carding machine which combs and cleans the mixture and causes it to issue in the form of a wool mattress. It is then put into a second carding machine which throws off a thin veil of wool which is wound around wooden blocks, and which is called "the carded form of wool." As the web comes out of the second carding machine, it is evenly laid over a double cone-shaped form, from which, when completed, the hat forms may be taken by cutting the double cone form or hat in the middle. From the time of the second process forward, the hat form constantly goes through successive processes. The next step is a hardening process, or what is called the first felting operation. The next operation is a shrinking operation, shrinking and tightening the fibers. After that the material is shrunk and tightened by a bumping operation. The next operation is a dyeing process. Then follows another bumping operation which shrinks the hat form and tightens it. The next operation is a final tightening operation. Following this is an operation by which the tip of the hat form is stretched. The next process is a process of pulling the form onto a wooden block to give it shape. Finally, the form is dried and it is then shaved or pounded and is ready for its final use as a hat body.

In the first case covered by the stipulation and involving the same material that is here imported; that is, *Henry Pollak (Inc.) v. United States*, 19 C. C. P. A. (Customs) 215, T. D. 46324, the classification was under paragraph 1115 of the Tariff Cact of 1922, as clothing and articles of wearing apparel in chief value of wool. In an extensive record in that case, an effort was made to establish that the goods were properly classifiable under paragraph 1119 as manufactures not specially provided for, wholly or in chief value of wool. The testimony established that the felt material was used for hats, but was used also for trimming, hand bags, and various other articles. The court below was of the opinion that the goods were properly classified, and that the use for other purposes than hats was fugitive, and we affirmed the decision.

The second case referred to, *Henry Pollak, Inc. v. United States*, 22 C. C. P. A. (Customs) 81, T. D. 47066, involved the same material and the same competing paragraphs of the Tariff Act of 1922 as the first. This case was practically a retrial of the first case, and the same conclusion was reached.

As we view the matter, there is but one new feature to be considered here, and this is largely a question of law. The Congress, in rewriting paragraph 1115 in the Tariff Act of 1930, divided the same, adding subparagraph (b), which seems to have been enacted for the purpose of taking care of hats and like articles which had not been theretofore specifically mentioned, but which had caused considerable litigation. In writing this subparagraph, this language was used: "Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt."

It is claimed by the Government here that the goods are properly classifiable under said subparagraph (b), which view was concurred in by a majority of the United States Customs Court. On the other hand, the importer claims that because of the language of said subparagraph (b) they cannot be included therein, but must be relegated to paragraph 1115 (a). The reason urged by the appellant is that under a long line of decisions by this court and the United States Customs Court, the language "manufactured wholly or in part of wool felt" must be construed to mean that there must have been felt before the hat bodies were manufactured, and if there was no felt as an independent entity, and the manufacture of the hats or hat forms and the felt proceeded simultaneously, then the bodies and shapes, etc., were not manufactured wholly or in part of wool felt.

The testimony in this case on the part of the Government is an attempt to show that the forms and shapes were, in fact, manufactured from wool felt. The Government claims that this testimony, taken at its full value, shows that the felt of which the forms were made appeared in the processing at the second stage; that after the wool had been wound upon the wooden cones as the first stage, at the next stage, namely, the first felting process, and thereafter, the material was wool felt, and that the hat form from and after the second stage was being made out of wool felt. Thus, Government counsel argue that even if it be admitted that there must be first felt before the hat forms are brought into existence, the testimony shows that this is true in the instant case.

It is quite plain, from an examination of the authorities, that the law is as has been urged herein by the appellant. A glance at some of these authorities will be in order.

Burlington Venetian Blind Co. v. *United States*, 1 Ct. Cust. Appls. 374, T. D. 31456, is the first of the so-called ladder tape cases. In that case the articles involved were so-called ladder tapes, made of cotton as entireties on looms, and used in the manufacture of venetian blinds. Although the question did not seem to have been directly raised, this court intimated very strongly that the objects before it might not properly be held to be manufactures of tapes previously manufactured.

This ladder tape question arose again in *United States* v. *Burlington Venetian Blind Co.*, 3 Ct. Cust. Appls. 378, T. D. 32967. Here the merchandise is described as two strips of woven fabric, united at regular intervals by means of other much lighter woven strips of fabric, and which are designed for the purpose of holding slats, and are used in the manufacture and repair of venetian blinds. It is said in the opinion that the object, when it comes from the loom, is completed except for the cutting of the small connecting threads. The conclusion of the court was that the article was not made of tapes or webs, as it had never assumed those independent forms, but that it had always been and was intended to be a ladder tape.

Another ladder tape case is *United States* v. *Walter et al.*, 4 Ct. Cust. Appls. 95, T. D. 33371. This case introduces the element of commercial designation, in which the court held contrary to the view of the importer.

United States v. *Macy & Co.*, 7 Ct. Cust. Appls. 8, T. D. 36256, involved certain lead and cotton clo-clo braids, the merchandise consisting of pieces of lead molded upon a flax cord, the whole being covered by tubular cotton braiding. It was contended that the material was dutiable as being in part of braids. The testimony showed that the articles were manufactured as a unit, and that the braid, as an entity, had never existed prior to its being found in the merchandise in issue and had never had a separate independent existence as an article or material. In view of this, this court was of opinion that the article was not made in whole or in part of braid.

Western Blind & Screen Co. v. *United States*, 9 Ct. Cust. Appls. 68, T. D. 39942, was another ladder tape case, in which we reached the same conclusion as stated in the above-cited ladder tape cases.

In *United States* v. *Dodge*, 13 Ct. Cust. Appls. 222, T. D. 41176, cotton rugs were involved. The question was whether they were properly classified as manufactures "made or cut from cotton pile fabrics," or carpets and rugs made wholly of cotton. The testimony showed that the rugs were woven on the loom to their final desired size, and that all that remained to be done as they came from the loom was to cut the selvage and sew it fast. The rug, as completed, had a pile. This court held that the rugs were not made from pile fabrics.

In *Angel & Co. (Inc.)* v. *United States*, 15 Ct. Cust. Appls. 19, T. D. 42132, certain extraction thimbles were classified as manufactures of paper. The merchandise was complete finished paper thimbles ready for use. It was claimed that the articles were manufactures of pulp. The entity of paper had never existed until these thimbles were made as a completely finished article. We held that they were manufactures of pulp.

One of our decisions on this interesting subject is *Curtis & Von Bernuth Mfg. Co.* v. *United States*, 22 C. C. P. A. (Customs) 651, T. D. 47633. Certain steamer rugs were here involved in chief value of wool not exceeding three yards in length. They were classified as blankets and similar articles "made of blanketing." The testimony showed that the articles were woven in lengths of about 50 or 60 yards, and they were so woven that after a length of 72 inches had been reached, the weft threads were automatically omitted so that the piece might be removed and the process continued. The question at issue was whether the involved articles were made of blanketing. This court held that inasmuch as blanketing had never existed in this case as a separate entity, it followed that the imported articles were not made of blanketing, but were blankets or robes, as the case might be.

The principle of the foregoing decisions was followed by us in two recent cases: *Swedish Venetian Blinds Co.* v. *United States*, 24 C. C. P. A. (Customs) 20, T. D. 48291, *Elmer T. Middleton* v. *United States*, 25 C. C. P. A. (Customs) —, T. D. 49265.

In addition to the authorities cited, there are many applicable authorities in the reports of the United States Customs Court which it will not be necessary to refer to here, but which are in point and are fully digested and noted in the briefs.

From these citations it is apparent that from the first session of this court it has been a uniform and well-settled holding that the language "made of" or

"manufactured of" presupposes that the material of which the article is made or manufactured exists before the article itself comes into existence.

It was the opinion of Presiding Judge McClelland that the trial court should follow the line of cases to which we have heretofore referred, were it not for what he regarded as contrary legislative intent, and cited the decision of this court in *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. (Customs) 285, T. D. 46078, where it was said: "All rules of construction must yield if the legislative intent is shown to be counter to the apparent intent indicated by such rule. The master rule in the construction of statutes is to so interpret them as to carry out the legislative intent." Proceeding upon this theory, the presiding judge was of opinion that the congressional proceedings, including the report of the Ways and Means Committee, were such as to lead to the conclusion that the Congress was intending to include hat forms, such as those involved here, within said paragraph 1115 (b), when the act of 1930 was drawn.

The law stated in the *Clay Adams* case, *supra*, and as quoted by the presiding judge, is the law as we understand it. However, it will be observed that the statement is that all rules of construction must yield if there be a contrary congressional intent shown. However, we must still retain in mind the law which is basic, as we view it, that if the language of a statute be plain and unambiguous, the law should be followed as written and it speaks for itself. Where it has so spoken plainly, no need of rules of construction is present, and hence recourse to the proceedings of the Congress and the committee having this legislation in charge, is unnecessary.

We are unable to discern any ambiguity in the language which the Congress used here. It used language which has been passed upon by this court for twenty-five years, and of which the Congress must have been fully conversant. It was language which was known to the profession and in the business world, and no difficulty need be had in understanding it.

In this view of the situation, if this material had never had a separate entity as wool felt, then there is no difficulty in the answer to the question presented. The Government contends that the testimony shows that from the second operation forward, the manufacture of these hat bodies was from wool felt. The testimony shows, however, that from the very initiation of the process of winding wool upon the hat forms, the process was one of hat form making. As the form advanced toward its final condition, the felting process continued and it was never until the last process that the material so processed became felt.

The court is of opinion that wool felt did not exist as an entity until the completion of these hat forms, and hence that the hat forms before us were not "manufactures wholly or in part of wool felt," under the facts and authorities.

The judgment of the United States Customs Court is *reversed* and the cause *remanded* for further proceedings.

CONCURRING OPINION

BLAND, Judge: It is with considerable reluctance that I feel compelled to agree with the conclusion reached by this court in reversing and remanding the judgment of the trial court. This action results in a regrettable anomaly. After studying carefully the legislative history, I do not have the slightest doubt that when Congress framed subdivision (b) of paragraph 1115, it intended to include therein the particular kind of merchandise here involved.

Courts have frequently said that the intent of the law was the law and that the master rule of construction was to so construe statutory language that it reflected the intent of the legislature. Of course, there are limitations to this rule. Some language must be found in the statute that calls for construction before its plain meaning can be ignored. *United States* v. *Stone & Downer Co.*, 274 U. S. 225. Phrases like that here involved have been so frequently construed by this and other courts that their meaning and effect is clear—no ambiguity exists. It is well settled that we cannot go to the legislative history of a statutory provision to produce ambiguity. *Railroad Commission of Wisconsin et al.* v. *Chicago, Burlington & Quincy Railroad Company*, 257 U. S. 563, 589. If any force is to be given to this line of cases, I know of no place where it fits better than in the decision of the issue at bar. When Congress wrote the provision it knew of the long line of holdings by this court which requires a conclusion that there must have existed a preexisting wool felt before the hat bodies could be classified under the disputed paragraph. Not-

withstanding this fact, Congress deliberately used the phrase "manufactured wholly or in part of wool felt."

I am inclined to believe that the Supreme Court of the United States, as presently constituted, might take a different view of this case, but to do so it would have to ignore the decisions cited and discussed herein by the late Presiding Judge Graham. Since the opinion delivered by Chief Justice Taft in *United States* v. *Stone & Downer Co.*, 274 U. S. 225, there has been a growing tendency of the courts of this country generally, including the Supreme Court, to liberalize the rule as to what you may consult and what extrinsic facts you may consider in an effort to arrive at the intent of Congress.

(T. D. 44715)

Wool-felt hats and bodies therefor

President's proclamation under section 336, tariff act of 1930, decreasing the rates of duty fixed in paragraph 1115 (b) of the said act.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D. C., March 23, 1931.

To collectors of customs and others concerned:

There is published for your information and guidance the appended proclamation of the President issued under the provisions of section 336 of the tariff act of 1930 decreasing the rates of duty on the merchandise provided for in paragraph 1115 (b) of the said act as follows:

Bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, from 40 cents per pound and 75 per cent ad valorem to 40 cents per pound and 55 per cent ad valorem; and in addition thereto on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles), from 25 cents per article to 12½ cents per article.

These decreases will be effective on and after April 15, 1931.

(Signed) F. X. A. EBLE,
Commissioner of Customs.

DECREASING RATES OF DUTY ON WOOL-FELT HATS AND BODIES THEREFOR

By the President of the United States of America

A PROCLAMATION

WHEREAS under and by virtue of section 336 of Title III, Part II, of the act of Congress approved June 17, 1930, 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," the United States Tariff Commission has investigated the differences in costs of production of, and all other facts and conditions enumerated in said section with respect to, bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles manufactured wholly or in part of wool felt and hats bonnets, caps, berets, and similar articles, made wholly or in part therefrom, finished or unfinished, being wholly or in part the growth or product of the United States and of and with respect to like or similar articles wholly or in part the growth or product of the principal competing country;

WHEREAS in the course of said investigation a hearing was held, of which reasonable public notice was given and at which parties interested were given reasonable opportunity to be present, to produce evidence, and to be heard;

WHEREAS the commission has reported to the President the results of said investigation and its findings with respect to such differences in costs of production;

WHEREAS the commission has found it shown by said investigation that the principal competing country is Italy, and that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic articles and the like or similar foreign articles when produced in said principal competing country, and has specified in its report the decreases in the rates of duty expressly fixed by statute found by the commission to be shown by said investigation to be necessary to equalize such differences; and

WHEREAS in the judgment of the President such rates of duty are shown by such investigation of the Tariff Commission to be necessary to equalize such differences in costs of production;

NOW, THEREFORE, I, HERBERT HOOVER, President of the United States of America, do hereby approve and proclaim the following rates of duty found to be shown by said investigation to be necessary to equalize such differences in costs of production:

A decrease in the rates of duty expressly fixed in paragraph 1115 (b) of Title I of said act on bodies, hoods, forms, and shapes, for hats, bonnets, caps, berets, and similar articles, manufactured wholly or in part of wool felt, from 40 cents per pound and 75 per centum ad valorem to 40 cents per pound and 55 per centum ad valorem;

And a decrease in the rate of duty expressly fixed, in addition thereto, in paragraph 1115 (b) on all the foregoing, if pulled, stamped, blocked, or trimmed (including finished hats, bonnets, caps, berets, and similar articles) (within the limit of total decrease provided for in said act), from 25 cents per article to 12½ cents per article.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 16" day of March, in the year of our Lord nineteen hundred and thirty-one, and of the Independence of [SEAL] the United States of America the one hundred and fifty-fifth.

HERBERT HOOVER

By the President:

HENRY L STIMSON

Secretary of State.

[No. 1941]

Mr. SPINGARN, of the Treasury Department. Mr. Chairman, we would like to insert in the record at this point the Treasury's report on Senator Connally's proposed amendment to eliminate the provision in the bill to restrict the allowance of the $100 exemption to residents of the United States who have been out of the country for at least 48 hours and to substitute therefor a new provision under which the allowance of the exemption would depend upon reciprocal action of any foreign country concerned. I would also like to place in the record a letter from Secretary Hull to Acting Director Bell of the Budget, expressing the views of the State Department on the same amendment.

(The letters referred to are as follows:)

FEBRUARY 11, 1938.

Hon. PAT HARRISON,
Chairman, Committee on Finance,
United States Senate.

DEAR MR. CHAIRMAN: Further reference is made to the request, dated February 1, 1938, of the clerk of your committee for a report on an amendment intended to be proposed by Senator Connally to the customs administrative bill, H. R. 8099.

The proposed amendment would eliminate from H. R. 8099 the provision now contained therein to restrict allowance of the $100 travelers' exemption to residents of the United States who have been out of the country for at least 48 hours, and would substitute therefor a new provision under which the allowance of the exemption to residents of the United States returning from a contiguous foreign country would be governed in certain respects by the practices of the foreign country with respect to allowing a travelers' exemption to its residents who return from the United States.

The maximum limitation of $100 upon the aggregate value of articles which could be passed free under the exemption would be retained, but if a contiguous foreign country allowed its residents an exemption upon purchased articles not exceeding, say, $42 (or an equivalent in foreign currency) in value, the same limitation would apply to the exemption to be allowed by the United States to its residents for articles purchased in that country. If the contigu-

ous foreign country allowed no travelers' exemption whatsoever to its residents, the United States would not apply its travelers' exemption to articles purchased in that country. If the contiguous foreign country allowed a travelers' exemption to its residents only if they had remained abroad a specified period of time, a corresponding time limitation would be imposed by the United States upon the application of its travelers' exemption to articles purchased in that country. Whether the time limitation of the foreign country is 15 minutes, 15 days, or any other period of time, the limitation to be enforced by our customs officers would be the same.

It has been the established policy for many years to accord under certain conditions an exemption not exceeding $100 to articles acquired abroad for personal or household use by returning residents of the United States. This exemption is deemed necessary to facilitate the examination of the baggage of arriving passengers. The provision of law granting this exemption has, however, been construed by the Department and by the courts as providing for the free entry of only such articles as are purchased or otherwise acquired as an incident of the trip. This construction is believed to be reasonable and necessary to protect American merchants and the practice would be expressly confirmed if section 31 of H. R. 8099, as passed by the House of Representatives, should be enacted into law. The Department is of the opinion that the 48-hour period during which passengers must remain abroad in order to claim the exemption according to the terms of H. R. 8099, as passed by the House of Representatives, should be retained in the bill for the purpose of assisting in the administration of the above-mentioned provision, and that the limitation should be uniformly applied. In the absence of such a restriction, serious difficulty is being encountered by customs officers in determining the purposes of passengers in making short trips abroad, and the restriction would eliminate such problems arising in connection with the return of passengers who have been abroad for a period of less than 48 hours.

If the practice were made dependent upon the action of the contiguous foreign country in which the articles were purchased, as provided in the proposed amendments, there would be lack of uniformity and continuing uncertainty as to the treatment to be accorded articles in passengers' baggage. The difficulties of administration of the laws governing passengers' baggage would be greatly increased by the enactment of the proposed legislation, and if adequate notice of changes made by foreign governments should not be given, it would be impossible to insure conformity with the terms of the proposed amendments during the period necessary for obtaining and disseminating information concerning such changes. For these reasons, the Department feels that the burdens which would be involved in the administration of the proposed amendment would outweigh any advantages which might be obtained from its enactment.

It should be noted also that Senator Connally's proposed amendment contemplates a distinction in treatment between purchased articles and articles acquired otherwise than by purchase. This would entail new administrative difficulties of serious consequence.

If your committee contemplates adoption of the proposed amendment notwithstanding the difficulties it would create for travelers and the Treasury Department, it is suggested that you may desire to obtain the views of the Department of State concerning its reciprocal provisions.

Very truly yours,

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

FEBRUARY 11, 1938.

The Honorable D. W. BELL,
Acting Director, Bureau of the Budget.

MY DEAR MR. BELL: Reference is made to a letter from Mr. F. J. Bailey of February 10, 1938, enclosing a copy of a proposed report of the Secretary of the Treasury to the chairman of the Senate Committee on Finance on an amendment intended to be proposed by Senator Connally to a bill (H. S. 8099) to amend certain administrative provisions of the Tariff Act of 1930, and requesting the comment of this Department on the amendment.

By making the treatment accorded to the importation of goods from contiguous countries by returning residents subject in certain respects to the condition of reciprocity, the amendment would probably result in different treatment for the goods of different countries. In my opinion, the amendment

would be inconsistent with the general principle of uniform treatment of imported goods in regard to customs matters, which is an essential part of the foreign commercial policy of this Government.

Sincerely yours,

CORDELL HULL.

Senator WALSH. I desire to place in the record numerous telegrams and letters, relating to the pending bill or amendments thereto, which I have received. The hearings on the pending bill, H. R. 8099, are now closed and the subcommittee will stand adjourned.

NEW YORK, N. Y., *February 8, 1938.*

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance, Washington, D. C.:

Bill just introduced by Senator Pepper limiting to 50 the number of cigars which may be imported free of duty under personal-use exemption clause, Tariff Act of 1930. Under general $100 exemption now in force cigars are brought in, particularly from Cuba, in large quantities affecting American cigar manufacturers' and retail dealers' practice. Violates entire spirit and intent of the personal-use exemption. No legitimate objection can be raised to proposed amendment. An obvious abuse detrimental to American industry. Should be stopped at once.

E. A. KLINE & CO., INC.

CIGAR MANUFACTURERS ASSOCIATION OF AMERICA, INC.,
New York City, February 7, 1938.

Hon. DAVID I. WALSH,
The United States Senate, Washington, D. C.

MY DEAR SENATOR: We wired you today and attach hereto a copy for confirmation.

We are taking the liberty of adding a word with respect to the need for this legislation.

The Tariff Act of 1930, paragraph 1798, permits the importation, free of duty, of articles up to $100 in value acquired abroad and brought back by residents of the United States. As the language of the paragraph indicates, the purpose of this proviso is to permit citizens to enjoy freedom from tariff restrictions on articles which are acquired for their own personal use. This privelege is susceptible to great abuse since the $100 limitation permits the importation of articles in a far greater number than practicable for personal use. In view of this circumstance customs regulations were adopted limiting to 50 the number of cigars which might be brought in under this exemption. For similar reasons the regulations likewise limited to 1 wine gallon the amount of liquor which might be brought in under this exemption. Recently a court decision held that these limitations exceeded the scope of administrative regulations.

With respect to liquor the limitation on the exemption has been restored by enactment, in June 1936, of section 337 of the Liquor Tax Administrative Act, which amended paragraph 1798 of the Tariff Act of 1930 by inserting the limitation to 1 wine gallon of liquor.

The $100 limitation which is now applicable to cigars has been the subject of continuous abuse. Cigars which command a price of approximately 15 cents in the United States may be acquired in Cuba for the equivalent of 5 cents. The increasing popularity of cruises in the past few years has stimulated the practice of visiting Habana. This combination of circumstances has resulted in the importation, tax free, of substantial numbers of Habana cigars to the detriment of American manufacturers and dealers. It is obvious that the spirit and purpose of the personal-use exemption are frustrated in the case of cigars by the $100 allowance.

At the first session of the Seventy-fifth Congress, Congressman Peterson introduced H. R. 6791, to amend section 1798 of the Tariff Act of 1930 by limiting to 50 the number of cigars which may be brought in free of duty. The bill was referred to the House Ways and Means Committee, where it failed to receive attention because of the intensive activity which that committee has been devoting to tax matters. There is now pending in the Senate H. R. 8099, which

makes certain administrative amendments to the Tariff Act. It is appropriate that H. R. 8099, as pending in the Senate, be amended by adding to it the bill limiting to 50 the number of cigars which may be imported duty free.

There can be no reasonable objection to this amendment. On the other hand, the harm which it causes has been recently evidenced by the flood of protests of retail dealers throughout the East concerning the abuse of the privilege contained in section 1798 of the Tariff Act of 1930. Persons returning from vacation cruises have been bringing excessive quantities of Habana cigars, which, in many cases, have been sold to friends and acquaintances. The suggested amendment would terminate this obvious abuse and limit, to a reasonable basis, the privilege accorded by this section 1798 of the Tariff Act of 1930.

If there is any additional information or data which you require, please do not hesitate to communicate with us.

Thanks for your cooperation.

Very truly yours,

CIGAR MANUFACTURERS ASSOCIATION OF AMERICA, INC.,
By SAMUEL BLUMBERG, *General Counsel.*

NEW YORK, N. Y., *February 7, 1938.*

Hon. DAVID I. WALSH,
Chairman of the Subcommittee of the Senate Committee on Finance,
Washington, D. C.:

In connection with H. R. 8099 now before you, may we request your consideration of amendment introduced by Senator Pepper to limit to 50 the number of cigars which may be imported duty free under personal-use exemption clause, paragraph 1, 798 Tariff Act of 1930. We are writing fully.

CIGAR MANUFACTURERS ASSOCIATION OF AMERICA, INC.,
ALVARO M. GARICIA, *President.*

PASSAIC, N. J., *February 8, 1938.*

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance,
Washington, D. C.:

Bill just introduced by Senator Pepper limiting to 50 the number of cigars which may be imported free of duty under personal-use exemption clause, Tariff Act, 1930. Under general $100 exemption now in force, cigars are brought in, particularly from Cuba, in large quantities affecting American cigar manufacturers and retail dealers. Practice violates entire spirit and intent of the personal-use exemption. No legitimate objection can be raised to proposed amendment. An obvious abuse, detrimental to American industry, should be stopped at once. We request your cooperation for favorable action amendment now before Subcommittee of Senate Committee on Finance, David I. Walsh, Chairman.

RUY SUAREZ & CO.

PHILADELPHIA, PA., *February 8, 1938.*

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance,
Washington, D. C.:

Respectfully enlist your support to personal-use exemption bill H. R. 6701 just introduced by Senator Pepper limiting to 50 the number of cigars which may be imported free of duty under personal-use exemption clause Tariff Act, 1930. Under general $100 exemption now in force cigars are brought in, particularly from Cuba, in large quantities affecting American cigar manufacturers and retail dealers. Practice violates entire spirit and intent of the personal-use exemption. We have been engaged in the manufacture of cigars for 30 years. Employ American labor, American distribution. Above practice unfair to our industry. No legitimate objection can be raised to proposed amendment. Obvious abuse should be stopped at once. We earnestly request your cooperation for favorable action to amendment now before your committee.

GRABOSKY BROS.

NEW YORK, N. Y., *February 8, 1938.*

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.:

We respectfully draw your attention to a bill introduced by Senator Pepper limiting 50 cigars which may be imported free of duty under personal-use exemption clause, Tariff Act, 1930. Tourists with their families returning from Cuba are bringing in large quantities of cigars, so that it has greatly affected the sale of cigars produced by the United States manufacturers to such an extent that it is highly noticeable. This practice violates the entire spirit and intent of the personal exemption and we believe no legitimate objection can be raised to the proposed amendment. We respectfully ask your cooperation for favorable action as to the amendment now before subcommittee of Senate Committee on Finance, David I. Walsh, chairman.

MAX SCHWARZ.

NEWARK, N. J., *February 8, 1938.*

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance,
United States Senate, Washington, D. C.:

An amendment to H. R. 8099 has just been introduced by Senator Pepper limiting to 50 the number of cigars imported free of duty under the personal-use exemption clause, Tariff Act of 1930. Under the $100 exemption now in force without limit on cigars, large quantities are being brought in from Cuba and is seriously affecting American cigar manufacturers and dealers. This practice violates spirit and intent of personal-use exemption. We request your cooperation and support of this amendment which will stop an abuse that is detrimental to American industry, and particularly to manufacturers in the State of New Jersey. We understand the amendment is now before subcommittee of Senate Committee on Finance, Hon. David I. Walsh, chairman.

CONGRESS CIGAR CO., INC.
WAITT & BOND, INC.
PORTO RICAN AMERICAN TOBACCO CO.

NEW YORK, N. Y., *February 8, 1938.*

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance,
Washington, D. C.:

Bill just introduced by Senator Pepper limiting to 50 the number of cigars which may be imported free of duty under personal-use exemption clause Tariff Act 1930. Under general $100 exemption now in force cigars are brought in particularly from Cuba in large quantities, affecting American cigar manufacturers and retail dealers. Practice violates entire spirit and intent of the personal-use exemption. No legitimate objection can be raised to proposed amendment. An obvious abuse detrimental to American industry. Should be stopped at once. We request your cooperation for favorable action. Amendment now before subcommittee of Senate Committee on Finance, David I. Walsh, chairman. During last Christmas holiday, to cite one instance, we learned three couples on holiday cruise to Cuba brought back $600 worth of cigars.

E. REGENSBURG & SONS,
ISAAC REGENSBURG, *Treasurer.*

E. POPPER & CO., INC.,
New York, N. Y., February 8, 1938.

Hon. DAVID I. WALSH,
Washington, D. C.

DEAR SIR: The amendment which has just been introduced by Senator Pepper (personal-use-exemption bill, H. R. 8099) merits your early and favorable consideration.

Under the general exemption of $100 that is now the rule, cigars can be brought into the United States from Habana in large quantities; this is done

to so great an extent, that the business of retailers and manufacturers in the United States is adversely affected.

This practice is contrary to the spirit of the personal-use exemption, and is damaging to American industry, and should be stopped.

It seems to us that no reason can be put forward against the proposed amendment, and we therefore earnestly request your favorable action upon the amendment now before you.

Respectfully yours,

E. POPPER & CO., INC.

GARCIA & VEGA,
New York, February 8, 1938.

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance,
Washington, D. C.

HONORABLE SIR: In past years a grave injustice has been done to both the retailer and manufacturer of domestic cigars, because of the fact that people going to Habana were allowed to bring into the United States $100 worth of cigars duty free.

We understand that a bill has been introduced limiting the duty-free amount to 50 cigars. This proposed amendment certainly is a step in the right direction and at least will minimize the importation of cigars in big quantities, which ultimately is detrimental to both retail and wholesale trade.

We trust that this amendment which is now before the subcommittee of the Senate Committee on Finance, David I. Walsh, chairman, will receive your wholehearted cooperation.

Very truly yours,

GARCIA & VEGA,
ANTONIO F. GARCIA.

A. SIEGEL & SONS, INC.,
New York, February 8, 1938.

Hon. DAVID I. WALSH,
Chairman, Subcommittee of the Senate Committee on Finance,
Washington, D. C.

DEAR SENATOR WALSH: We understand that Senator Pepper has just introduced a bill restricting the number of cigars to 50 which may be imported free of duty under the personal-use clause of Tariff Act of 1930.

Cigars are brought in, particularly from Cuba, in quantities which are having an adverse effect on American cigar manufacturers, retail dealers, and the cigar industry in general, under the $100 general exemption which is now in force. This present practice, we feel, is obviously detrimental to American industry and violates the intent of the personal-use exemption.

May we look forward to your cooperation for favorable action on the amendment now before your committee?

Respectfully yours,

A. SIEGEL & SONS, INC.,
By VICTOR SIEGEL.

NEW YORK, N. Y., *February 9, 1938.*

Senator DAVID I. WALSH,
United States Senate Building, Washington, D. C.:

We urgently request your support of bill introduced by Senator Pepper limiting the number of cigars to 50 which may be imported free of duty under personal-use exemption clause, Tariff Act 1930. Have personal knowledge of large quantities of cigars being brought in by consumers from Cuba to the great detriment of American manufacturers and dealers and will appreciate your cooperation toward favorable action on amendment now before Senate subcommittee on finance, David Walsh, chairman.

D. EMIL KLEIN.

SAN FRANCISCO, CALIF., *February 9, 1938.*

HON. DAVID I. WALSH,
United States Senate, Washington, D. C.:

RE H. R. 8099 48-hour provision of section 31: May we respectfully call your attention statement made before your honorable committee by David R. Craig, American Retail Federation, on January 28, California retail merchants particularly in southern part of State suffering tremendous losses at present by reason of existing unfair competitive condition through shopping across Mexican border. Respectfully urge your favorable consideration and retention of 48-hour provision of section 31 above referred to.

CALIFORNIA RETAILERS ASSOCIATION,
MALCOLM MCNAGHTEN,
President.
VINCENT D. KENNEDY,
Managing Director.

CIGAR MAKERS' INTERNATIONAL UNION OF AMERICA,
Washington, D. C., February 11, 1938.

HON. PAT HARRISON,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR MR. CHAIRMAN: On behalf of the Cigar Makers' International Union, representing thousands of organized cigar makers, dependent for their livelihood on the production of cigars in the United States, we most earnestly ask favorable consideration of your committee and of the Senate in support of the amendment of Senator Claude Pepper, now before you, wherein returning tourists will be limited to the free entry of not more than 50 cigars.

In making this request, we believe we have the support of the Treasury Department in that the Treasury Department, on its own volition, and realizing the loss of revenue made possible by what might be termed an evasion of the Tariff Act, placed in force a regulation wherein returning tourists were limited to a free entry of 50 cigars. This protection to the employment opportunities of American cigar makers was removed as the result of a court decision in a similar case. The American cigar makers look to the Congress to assist in protecting their employment opportunities. Employment opportunities of cigar makers have been seriously affected by the entry into Florida, New York, and other ports of thousands of cigars purchased in Cuba, supposedly for the use of the returning tourists. In reality these cigars have been used in whole or in part in many cases to pay for the trip to Cuba by the so-called returning tourists.

The wage structure for American cigar makers, producing cigars comparable to those produced in Cuba, through collective bargaining, is considerably more than the wages paid for similar work in Cuba.

In addition, the Government, under the present system, loses considerable revenue which we feel should be the property of the Government as the law intended it to be.

Trusting that we shall have your support and cooperation, and that this amendment will soon be enacted into law, and with many thanks for your courtesies and consideration, I am,

Sincerely yours,

R. E. VAN HORN,
President.
M. J. FLYNN,
Legislative Representative.

(The following amendment to H. R. 8099, and statement relative thereto, was submitted by Mr. Mark Eisner, attorney at law, New York City, on behalf of the Toilet Goods Association, Inc., and the Perfumery Importers Association:)

To H. R. 8099 add a new subdivision to section 304 (a) (3) to be subsection "(k)":

"(k). Such article is used as part of an assembly of articles or with other articles as or in connection with a container; and the Federal Trade Com-

mission or other governmental agency issues or has issued an order which would preclude the appearance on an imported article of any mark which would comply with the requirements of this section."

In order to make readily understandable the reasons why the amendment is desired we will consider one specific example, to wit, bottles made in France or in England to contain perfumes or talcum powders:

It is customary in the toilet-articles industry to import what are known as concentrates of perfume to which in the United States alcohol is added which completes the article. While there is absolutely no difference between the perfume as thus sold in the United States and the same perfume as sold in France (because the same concentrates are used in France and the same amount and grade of alcohol is added there to complete the article sold in France) the Federal Trade Commission is consistently holding that an article so manufactured cannot be sold in America in any form which will lead the public to believe that the completed article was made in France. The Federal Trade Commission therefore insists that even if the label of the article contains no words which would indicate French origin, the word "France" on the bottle if the bottle were imported would tend to deceive the public into believing that the contents of the bottle may have been imported as such. It will make no difference if the bottle has blown into it or has affixed to it the legend, "Bottle imported from France." The Federal Trade Commission will undoubtedly hold that this is enough to lead part of the public into believing that the contents also were imported from France.

While it might be suggested that the label indicating the contents of the bottle might also say "Ingredients imported from France but assembled in the United States" and thus satisfy the Federal Trade Commission, a very great hardship would be inflicted upon manufacturers for the reason that many of them prefer to have their labels indicate only the name of the article and the name of the manufacturer without any surplus language. Besides, the Federal Trade Commission insists that where such language is used it must be given great prominence and it will not be satisfied with the placing of a sticker on some obscure part of the package.

The amendment will take care of many situations where the Federal Trade Commission is satisfied with the label as it stands alone but not satisfied where the same label is on a bottle marked with the country of origin. It should be understood that the articles referred to in this amendment are not imported into the United States for resale, but are so imported for use only.

(Subsequently, at the request of Senator Hayden, of Arizona, the following letter, addressed by him to the Secretary of State, concerning his amendment to H. R. 8099, was ordered placed in the record. See pp. 179–187.)

UNITED STATES SENATE,
February 16, 1938.

The honorable the SECRETARY OF STATE,
Washington, D. C.

MY DEAR SIR: I have just read a copy of your letter of February 10 to the Acting Director of the Bureau of the Budget, with reference to an amendment I have proposed to H. R. 8099, now pending before the Senate Committee on Finance.

May I respectfully suggest that you have totally misunderstood the purpose of my amendment. What my proposal seeks to accomplish cannot be better stated than in the words of the Acting Secretary of the Treasury in his letter of February 11 to Senator Harrison:

It is believed that the enactment of the proposed amendment will extend the application of the rate of 7½ cents per pound to dates packed in a manner not in use at the time of the enactment of paragraph 741 of the Tariff Act of 1930. The intent of Congress, as indicated in the Congressional Record of February 19, 1930, pages 4067 to 4075, inclusive, was to impose a rate of 7½ cents per pound on dates packed in small containers weighing with the contents 10 pounds or less so as to induce the packing of dates in the United States."

Translated into undiplomatic language, the above statement may be interpreted to mean that last year certain American importers, by a slick trick, evaded the clear intent of the law. I do not want to see them get away with it again, and seek no more than a restoration of the Tariff Act of 1930 as it was enforced for more than 6 years.

I am glad to note that you are engaged in the negotiation of a treaty of commerce with Iraq, and beg to say that it is my understanding that only a very minor proportion of the dates imported into the United States from that country is in packages of 10 pounds or less. I am sure that the Government of Iraq cannot be very vitally concerned with respect to the small volume of export package dates, since in 1930 Iraq sent to the United States a total of 27,000,000 pounds of dates with pits, and 17,800,000 pounds of pitted dates. My sole interest is to provide that the packaging of dates for the American retail trade shall be done under sanitary conditions in the United States rather than in Iraq and in other near eastern countries where trachoma and like infectious diseases are prevalent.

I had forgotten that there was any import duty at all on bulk dates and would have no objection to cutting in half the existing duties of 2 cents per pound on pitted dates and 1 cent per pound on dates with pits. I would not even object to the entire elimination of the present tariff on bulk dates if you have the requisite authority of law.

I shall await your prompt reply.

Very sincerely yours,

CARL HAYDEN,
United States Senate.

(Whereupon at the hour of 12 noon, the committee adjourned.)