CONFIDENTIAL

Vol. 1

The United States Senate

Report of Proceedings

Hearing held before

Subcommittee of the Committee on Finance

Excerpts of comments on the
Bill (H. R. 8099)

March 1, 1938

Washington, D. C.

WARD & PAUL

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C O N F I D E N T I A L

Excerpts of comments on the bill [H. R. 8099], to amend certain administrative provisions of the Tariff Act of 1930, and for other purposes.

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Tuesday, March 1, 1938.

United States Senate,

Subcommittee of the Committee on Finance,

Washington, D. C.

The subcommittee met pursuant to call, at 10:30 o'clock a. m., in the Senate Finance Committee Room, Senator David I. Walsh [chairman] presiding.

Present: Senators Walsh [chairman], Clark and Vandenberg.

Senator Walsh: I asked the reporter to be present this morning simply because we do not know when this bill will go to the full committee and we might want a memorandum of what you state. I assume that you may say some things which you may not desire to be made public and so the record of this proceeding will not be printed, but you will have before you a copy of the transcript.

STATEMENT OF MR. ALGER HISS,

Assistant to Assistant Secretary of State.

Mr. Hiss: As the Secretary of State said in his letter to Senator Harrison on this particular subject, we feel that any restriction on the present trade in lumber from Canada comes at an unfortunate time because we are engaged in negotiating a renewal of the current trade agreement with Canada. Public announcement has been made and we are actually officially carrying on negotiations and we think anything in the way of restrictions that would require the marking of lumber from Canada would be unfortunate.

However, as I told Senator Bone, when I spoke to him yesterday, and as I told Mr. Compton, representing the industry, we feel primarily it is a matter of policy for the lumber industry itself to express itself on and for Congress to decide. Our point of view is simply that of negotiators. We think, as negotiators, our way would be easier if this action were not taken.

Senator Vandenberg: Of course your way would be easier if you had no tariff obstructions of any kind, would it not?

Mr. Hiss: I would not say so, Senator. Our job is a bargaining job.

Senator Vandenberg: Is it fair to inquire whether the immunity for Canadian lumber has been part of the existing agreement?

Mr. Hiss: No, it is not. In our opinion, as we stated in the letter to Senator Harrison, a requirement for marking of Canadian lumber, if undertaken for the future, would not violate the existing agreement. We merely think it would be an added restriction on Canadian lumber that would make negotiations a little more difficult.

The particular point we made with the lumber people is that we are anxious to secure concessions if the British market for the lumber industry and any irritation in the field of lumber will make that more difficult.

After a long talk with Senator Bone and Mr. Compton yesterday we feel that it is clear that the lumber industry has decided that they prefer a bird in the hand to a bird in the bush and we have no quarrel with that. We think that is a matter for Congress to decide.

We see no major policy involved that we wish to take a stand on and we restrict ourselves to the statement in the letter that, purely from the point of view of strengthening the hands of the negotiators, we feel it will be more difficult to get concessions in the British Market for the lumber industry if this is adopted.

Senator Walsh: Has the Canadian Government communicated with the State Department on the subject?

Mr. Hiss: There has been a protest in the past because, as you know, this question of marking has been up in the past,

and there have been representations in the past by the Canadians saying they hoped we would not undertake to require marking on Canadian lumber.

Of course, as technical improvements are introduced, marking becomes simpler and less of an economic burden and it is difficult, therefore, to say what the momentary position of the Canadian Government is. We do feel it will prove an irritation.

Senator Walsh: Do any other countries have similar provisions of the one proposed?

Mr. Hiss: I believe a great many have.

Senator Walsh: Do you know whether any other countries have a requirement for the marking of lumber?

Mr. Hiss: I understand so, and I understand Canada, itself, marks a great deal of the lumber it ships to other parts of the British Empire.

Senator Walsh: Does Canada require the marking of our lumber?

Mr. Hiss: I do not believe I know the answer to that. Perhaps Mr. Johnson can state.

Mr. Johnson: I do not know definitely, but it is my impression that Canada does not require it. I believe our exports to Canada, however, are principally lumber used in hardwood flooring.

Senator Vandenberg: Did you say Canadian lumber must be

marked to go into the balance of the British Empire to get their preference?

Mr. Hiss: I am not sure about the whole of the Empire, but I believe it is required for the British Islands.

* * * *

Senator Walsh: It is agreed by the committee that the amendment of Senator Barkley may be inserted in the bill.

Mr. Johnson: As modified?

Senator Walsh: Yes. Page 2, line 13: We have just disposed of that.

Page 4, line 17 -- the lumber amendment.

Senator Vandenberg: Of course I am going to move to strike out [J] entirely but you would not care to do that. If you want to accept the amendment in the form as finally written, let it go at that for the purpose of the committee action.

* * * *

Senator Walsh: Page 21, lines 1 to 7.

Mr. William R. Johnson [Chief Counsel, Bureau of Customs, Treasury Department]: Section 2 of the Foreign Trade Agreements Act of June 12, 1934, now provides that the provisions of Section 516[b] of the Tariff Act of 1930 [granting domestic interests the right to protest the classification or rate of duty imposed on competing imported articles] shall not apply to any article which is the subject of a foreign trade agree-

ment. Since Section 15[a] of H. R. 8099 materially revises Section 516[b] of the Tariff Act of 1930, it is felt necessary to specify, as Section 15[c] in effect does, that therevised Section 516[b] does not change existing law by granting domestic interests a privilege which they do not now enjoy, i. e., the privilege of protesting classification or duty rate on articles which are the subject of foreign trade agreements. In other words, the purpose of the provision is to make it clear beyond doubt that the policy of Congress in this respect is to be continued.

Senator Walsh: That provision [c] may stand as written in the bill.

Senator Vandenberg: I reserve the right to fulminate on the subject.

Senator Walsh: Page 22, between lines 22 and 23: That was passed.

Page 33, line 17, to page 34, line 2.

Mr. Johnson: Mr. F. R. Marshall, representing the National Wool Growers' Association, and Mr. C. J. Fawcett, representing the National Wool Marketing Corporation, suggested that Section28 be amended by placing a period after the word "transfer" in line 17, page 33, and striking out all language thereafter, down to and including the word "articles" in line 2 on page 34. That is found in the hearings at pages 215 and 219.

If Congress decides that duty should be assessed on all wastes and residues resulting from the manufacture of the articles enumerated in paragraph 1101[a] of the Tariff Act of 1930, it is believed that no unusual administrative difficulties will result. However, attention is invited to the fact that the regulations of the Treasury Department under paragraph 1101 of the Tariff Act of 1922 and paragraph 1101[a] of the Tariff Act of 1930 have provided that all wastes normally incurred, except noils, whether valuable or not, shall be considered as having been used in the manufacture of the enumerated articles and no duty assessed thereon. These regulations are predicated upon the view that Congress must necessarily have recognized that all of the wool or hair introduced into manufacture can not appear in the finish carpets and other enumerated articles and that various residues must necessarily result in the course of such manufacture. It has been the view of the Treasury Department that Congress did not intend that duties should be assessed on residues which resulted in the usual course of manufacture of the enumerated articles and which could not be re-used in such usual course of manufacture. The language to which Messrs. Marshall and Fawcett objected gives expression to the long continued administrative practice under the statutes cited.

It has been the practice under the regulations of the Treasury Department to assess duty on noils which are not re-

used in the manufacture of the enumerated articles at the rate of 12 cents a pound under the Tariff Act of 1922 and at the rate of 14 cents a pound under the Tariff Act of 1930, irrespective of whether or not such noils are capable of being reused in such manufacture, on the theory that noils represent a valuable part of the imported wool segregated during the course of manufacture which should be assessed with a portion of the duty provided for in paragraph 1101[a] on the basis of their relative value. The adoption of the suggestion of Messrs. Marshall and Fawcett would necessitate the assessment of duty on all noils at the full rates of duty provided for in paragraph 1105[a] of the Tariff Act and would result in a substantial transfer of articles from a free to a dutiable status, a proposal not germane to the general purposes of the bill.

The Treasury Department recommends against the adoption of the proposed amendment.

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Senator Walsh: Section 3, page 2, line 13.

Mr. Johnson: Mr. John G. Leroh, representing the American Tariff League, objected to the inclusion in subsection [a], page 2, line 13, of the phrase "English name of the country of origin" and suggested that the phrase "in legible English words" now found in existing law be retained.

Mr. James W. Bevans, representing the National Council

of American Importers and Traders, made a similar suggestion. It is the view of the Department that the language objected to is amply clear and precise. The language desired by Mr. Leroh would, as in the past, cause doubt as to the authority of the Customs officers to accept standard abbreviations such as "Gt. Britain" for Great Britain and variant spellings such as "Brasil" for Brazil.

Gt. Britain has been held to be other than the English name "Great Britain" and we have had numerous cases where the merchandise has been imported marked "Gt. Britain" and we have had to correct it and spell it out "Great Britain". Again "Brasil" has been held to be other than the English name "Brazil" because "Brasil" is the Portuguese spelling.

Senator Walsh: That proposal is made by someone who wishes to restrict imports and does not want the liberal spelling to be used. That may be rejected.

Mr. Johnson: Mr. Bevans objected to the provision of subsection [a][1], page 2, lines 20 and 21, giving the Secretary discretion with respect to the "place on the article [or container] where the mark shall appear." [Hearings, pp.69-70] The Treasury Department believes that it is essential to effective administration and uniformity in marking that the Secretary be given authority to prescribe the place where the mark shall appear. For example, if the proposed deletion is made, unfinished articles could properly be marked in such

manner that the marking would necessarily be obliterated by a finishing process which would not affect marking in another place. An actual case involved tennis racquet frames marked on the handle in such manner that the mark would later be covered when the handle was wrapped with tape in the United States.

Senator Walsh: The committee will reject the amendment.

Mr. Johnson: Mr. Albert MacC. Barnes, representing the Customs Bar Association, objected to subsection [a][1] on the ground that it gave the Secretary of the Treasury a non-reviewable discretion. [Hearings, pp. 201-202.] He suggested the following amendments:

On page 2, line 17, strike out the last word "the" and insert in lieu thereof rhe words "any reasonable";

In line 19, after the words "by any other", insert the word "reasonable";

In line 20, delete the first word "whatsoever" and the third word "the" and insert in lieu of the last mentioned word the words "a reasonably conspicuous";

In line 21, delete the word "mark" and insert in lieu thereof the word "marking". [This suggestion was made orally to Treasury representatives.] The Treasury Department has no objection to these changes.

Senator Walsh: Very well.

Mr. Johnson: Mr. B. A. Levett, representing the Merchants

Association of New York [hearings, pp. 37-38], and Mr. Bevans [hearings, pp. 70-71] objected to subsection [a][2], page 2, line 22, which gives the Secretary the right to require the addition of other words or symbols which may be appropriate to prevent deception as to the origin of the article or of any other article with which it is usually combined subsequent to importation. Mr. Bevans suggested that the following proviso be added after the semicolon, at the end of line 2, 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."

The proposal raises a question of policy. If the suggested proviso were adopted, the Secretary would not be able to require an imported toothbrush handle to be marked with the words "Handle made in _____" where the marking would not later be covered with bristles.

Senator Walsh: The committee will reject that amendment.

Mr. Johnson: Mr. Lerch objected to the authority given to the Secretary in subsection [a][3][A], page 3, line 5, to exempt articles which can not be marked prior to shipment to the United States without injury. [Hearings, pp. 163-164.] He suggested that the following proviso be added:

"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."

The Treasury Department believes that this amendment is unnecessary and unwise. It apparently contemplates that an imported article must be marked with legible and conspicuous letters if any simple mark is put on a similar article produced in the United States. It is the present practice to apply this exception to articles such as powders, fluids, precious stones, and other articles similarly incapable of being marked. The bill without the suggested proviso would continue a practice about which there has been no complaint.

Senator Walsh: The Committee will reject that amendment.

Mr. Johnson: Mr. Alfred E. Rosenhirsch, representing E. Rosenhirsch Company, submitted an amendment designed to except bristles from the marking requirements. [Hearings, pp. 55-56.] The Treasury Department does not favor such an amendment. If the representations made by Mr. Rosenhirsch to the subcommittee, that the ultimate purchaser would necessarily know their country of origin in the absence of marking, are correct, bristles can be excepted under subsection [a][3][H], appearing at the top of page 4 of the bill. The mere fact that competitive products are not made in the United States would not seem to justify an exception from

from marking requirements, for consumers frequently desire to distinguish between goods of different foreign origins. For instance, they may want British goods but not German goods or Chinese goods and not Japanese goods.

Senator Walsh: The committee will reject that amendment.

Mr. Johnson: Mr. Leroh objected to subsection [3][F], page 3, line 16, which authorizes exception from marking requirements if "Such article is imported for use by the importer and not intended for sale in its imported or any other form" on the grounds that it would be difficult to enforce. [Hearings, p. 164.] Mr. Levett suggested that the language of this subsection be clarified. [Hearings, p. 38.] The Treasury Department has not experienced any unusual difficulties in enforcing this provision, which is now covered by a regulation. It believes that the present language is amply clear and precise.

Senator Walsh: That may be rejected.

Mr. Johnson: Mr. Leroh objected to subsection [3][G], page 3, line 19, which authorizes the Secretary to except from the marking provisions certain merchandise which is to be processed after importation. He urged that such processing should be done only under bond. [Hearings, p. 164.] In view of the fact that section 27 of the bill authorizes the Secretary to require a bond in any case he may deem proper, the

Treasury Department does not believe that a special provision is necessary to cover this situation.

Senator Walsh: That may be rejected.

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Mr. Johnson: In connection with Section 3, Mr. Levett suggested that section 22, page 26, line 19, be amended to provide that, where an importer receives goods improperly marked and subsequently exports them, not only shall the 10 per cent additional duty for failure to mark be remitted but also the regular duty be refunded even though these goods have been released from customs custody. [Hearings, p. 39.] The Treasury Department is opposed to such an amendment for the reason that it would be an incentive for the importation of goods improperly marked. Importers could import goods upon consignment improperly marked, knowing that if they were unable to sell them they could be exported and the regular duty refunded. Serious administration difficulties would probably follow.

Senator Walsh: The Committee will reject that amendment.

Mr. Johnson: Mr. Joseph F. Lockett, representing the National Institute of Carpet Manufacturers, Inc., endorsed the marking provisions of the bill. In his own behalf, he suggested that a new section be added to the bill to 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. [Hearings, p. 27.] He submitted the following amendment designed to accomplish this purpose:

"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."
[Hearings, p. 170.]

In a brief submitted after the hearings were closed, Mr. Frederick L. Kraemer, representing the New York Customs Brokers Association, endorsed this proposal. The Treasury Department is opposed to a provision of this kind, which would provide more favorable treatment for importers who have failed to meet their obligations promptly than for importers who have paid marking duties in similar cases and would be unable to recover them under Mr. Lockett's proposal. The Treasury Department believes that retroactive relief in a case of this kind would establish an undesirable precedent. If the Congress deems it desirable to grant such relief, notwithstanding the views of the Treasury Department, it would seem more appropriate to dispose of such matters by bills for private relief so that each might be considered on its own merits.

Senator Walsh: I remember Mr. Lockett's case very distinctly. He had a case pending before the Treasury Department and was subject to a penalty --

Mr. Johnson: Of about $12,000.

Senator Walsh: How much?

Mr. Johnson: A penalty of about $12,000.

Senator Walsh: And there are similar cases. The case had a great deal of equity and merit, but as I understand,

from a strict interpretation of the law and the language of the law, the Department felt that the penalty should be imposed?

Mr. Johnson: Yes, sir.

Senator Walsh: That was a case where there was a province in Argentine --

Mr. Johnson: A ranch.

Senator Walsh: And the ranch was marked as the place of origin and not Argentine. I personally felt he had a great deal of merit.

Mr. Johnson: Incidentally, Senator, it was a Scotch name.

Senator Walsh: I suggested that he present a bill to be considered by the Committee on Claims rather than have it incorporated into this bill.

Do you know how much money was collected in those cases?

Mr. Johnson: There are some tremendous sums. I know one person who paid $70,000 on some free merchandise.

Senator Walsh: And in all these cases there appeared to be no intent to deceive.

Mr. Johnson: No. I recall one case where a shipment was made from Italy and directions were given to workmen who did not understand English and, by mistake, they put on a stencil that read "Use no hooks" instead of "Products of Italy."

Senator Walsh: Do you think we should consider giving them relief under this bill?

* * * *

Senator Walsh: A note should be made that this matter will be taken up before the whole committee and you are requested to draft an amendment regarding refunds to those who have been unjustly penalized under the marking provision.

Mr. Johnson: Mr. Mark Eisner, representing the Toilet Goods Association and the Perfumery Importers Association, proposed a new subdivision [k] to follow line 17 on page 4. [Hearings, pp. 253-254.] The proposed subdivision would read as follows:

"[k] Such article is used as part of an assembly of articles or with other articles as or in connection with a certainer; and the Federal Trade Commission 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."

The statement filed by Mr. Eisner indicates an opinion that the proposed new language would authorize an exception of empty perfume bottles from the marking requirements on the basis of an order of the Federal Trade Commission that such bottles can not be marked to indicate French origin unless some label or other mark on the bottle, when filled with perfume of American manufacture, clearly indicates the American

origin of the contents. The Treasury Department does not believe that this result would follow. A Federal Trade Commission order requiring additional marking to indicate the origin of the contents would not preclude the marking of the empty container when imported. It would seem that the only provision which would properly accomplish the purposes indicated by Mr. Eisner is one which would exempt empty containers, parts and accessories thereof from the marking requirements if such containers are to be filled by the importer or for his account. Whether such an exception should be allowed is a question of policy for the Congress rather than one of administrative difficulty. It is believed, however, that domestic manufacturers of containers might be interested in having an opportunity to express their views.

* * * *

Senator Walsh: As I understand it, this would permit the domestic perfume maker to use bottles, stoppers, et cetera, without any marking?

Mr. Johnson: The situation, as I understand it, is that the large perfume manufacturers are largely French manufacturers who have subsidiaries in this country and elsewhere. They make all of their bottles and essence in France and ship it to the United States, Argentine, et cetera, and the perfume, after being manufactured here, is placed in the bottles. They manufacture their labels also and they would like their

labels to read "Coty" or "Hubigant".

Senator Walsh: Are any of these concerns controlled directly by French manufacturers that would use the French bottle and French stopper and French box and put in French perfume and thereby avoid the duty?

Mr. Johnson: They do not avoid the duty because they would have to pay the duty on the empty bottle as it comes in. The essence is made in France and it is imported and pays duty as essence.

Senator Clark: It is the same as Coca-Cola, where the essence is manufactured in one place and bottled elsewhere.

Senator Vandenberg: I suppose the American bottle makers would object to the exemption.

Mr. Johnson: These are fancy, special bottles, and they are importing them today. The people who talked to me about it said they did not care about the duty itself.

Senator Clark: I do not see any objection to their putting on the bottle that it is made in France.

Mr. Johnson: We would probably require the addition of the word "bottle" in that case because that would be necessary to prevent deception as to the contents.

Senator Vandenberg: What is the Treasury Department's position on that?

Mr. Johnson: We think it is a matter of policy for Congress to decide, in view of the possibility of deception.

Senator Clark: I think I am opposed to it.

Senator Walsh: Section 5, page 9, line 8 of the bill, there is an amendment suggested by Mr. Leroh. This provision is that no administrative ruling resulting in the imposition of a higher rate of duty than has been applied under an established and uniform practice shall be effective until 30 days after publication.

Mr. Johnson: Mr. Leroh proposed that section 5 be amended by substituting on page 9, line 8, the word "different" for the word "higher." [Hearings, p. 64.] Section 5 now provides that no administrative ruling resulting in the imposition of a higher rate of duty or charge [exceptunder the Anti-Dumping Act] shall be effective prior to the expiration of 30 days after the date of such ruling is published. This is in accordance with a practice followed for more than thirty years. Under Mr. Leroh's amendment this provision would apply to rulings resultings in lower as well as higher rates of duty. The Treasury Department has not heretofore received any requests for action such as Mr. Leroh proposes and does not believe that it would be administratively desirable.

Senator Clark: I move that that be rejected.

Senator Walsh: Then, it is rejected.

Section 7.

Mr. Johnson: Mr. Bevans suggested that section 7, page 10, line 12, be amended to eliminate the provision in section

402 of the Tariff Act of 1930 that either foreign value or export value, shall be adopted as the first basis of appraisement, depending upon the higher of the two values and to provide that foreign value alone shall be the first basis of appraisement with export value an alternative to be used when foreign value can not be ascertained. He also suggested that "United States value" as defined in section 402[a] be redefined to provide for thededuction of unusual profits and expenses without the present maximum of 8 per cent for each of these items and that the definition of "American selling price" in section 402[g] be amended by deleting the last clause thereof. [Hearings, p. 72-73.] The suggested amendments are highly controversial in nature and there is no substantial accord among the various parties who would be affected. The Treasury Department believes that changes as serious as those proposed by Mr. Bevans should receive more extensive consideration than can be given to them at this time.

Senator Walsh: That amendment may be rejected.

Section 12.

Mr. Johnson: In that same section -- section 7 -- under No. 2, on page 12 of the mimeograph, Mr. Barnes expressed the opinion that Section 7, if enacted, would result in difficulties for the Treasury Department. Our field officers, by actual experience, have asked for this change and we feel that they are perhaps more competent to know what they need than

Mr. Barnes.

Section 12, on page 14 of the bill, line 9, relates to the disposition of unclaimed and abandoned merchandise.

Mr. Levett objected to subsection [a] of section 12, page 14, line 9, which provides that any merchandise which shall remain in customs custody for one year from the date of its importation without all estimated duties and storage or other charges thereon having been paid shall be considered unclaimed and abandoned to the Government. [Hearings, p. 40.] He expressed the belief that this provision would include the situation where the original estimated duties based upon entered value have been paid, but the Collector, upon information from the Appraiser that he intends to advance the value, requires a deposit to cover the additional duties. He suggested that the term "estimated duties", page 14, line 17, be definitely defined.

The term "estimated duties" is well understood to mean the duties estimated by the Collector to be due before his final decision as to the net amount due has been determined and expressed by liquidation of the entry. The Treasury Department believes that an importer should risk the loss of his goods if he does not pay the demanded duties within a reasonable time.

Senator Walsh: It will be rejected.

Now, Section 14.

Mr. Johnson: Section 14, page 16, line 10 --

Senator Walsh: You have substituted a new section for that?

Mr. Johnson: Yes, and that still continues a matter to which Mr. Levett objects. He objects to the appraisal of the merchandise by the Customs Court where nosamples are available. However, courts have repeatedly determine the value of articles not before them, and we see no objection to appraising merchandise in the absence of samples. We have had one case that I know of where the weevils had eaten all of the flour, and it was impossible to get samples.

Senator Walsh: It may berejected. Section 16.

Mr. Johnson: On page 22, line 1, Mr. Bevans objected to the deposit in the Treasury of monies collected as fines, penalties or forfeitures. He wanted those monies held in the Collector's account so that refund could be made a day or two sooner than possible now, where the refund is made by the disbursing officer. It is purely a question of sound and uniform accounting and we recommend the retention of the present provision.

Senator Walsh: The proposed amendment is rejected. Section 26.

Mr. Johnson: On page 29, line 14, Section 26, which runs from lines 14 to 19, inclusive, proposes an elimination from the present law of language which has caused misunder-

standings rather than difficulties. It says that part of the proceeds of sales of seized merchandise shall be accounted for as duties.

Now, such accounting is made and, for many years has been made, only if the duties can not be recovered from the law violator whose goods have been seized. It was established by the Supreme Court in 1839 that although goods are seized, he is still liable for the duties. It is a perennial claim that that provision defeats our ability to collect from the law violator, and this amendment is proposed only for the purpose of clarification of the situation.

Senator Walsh: It may be rejected. Section 29.

Mr. Johnson: In Section 29, page 35, line 10, there is an amendment, referred to as a blanketing amendment, which will correct a ruling of the customs courts holding that steamer rugs where 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 restore the administrative practice of several years and affect the original intent of the Congress. Mr. Bevans objected to this change.

Senator Walsh: This gentleman is an importer protesting against the change which is believed to be the intent of

Congress?

Mr. Johnson: Yes, sir.

Senator Walsh: It will be rejected. Now, Section 31.

Mr. Johnson: Section 31 was approved by the committee yesterday. That relates to the $100 exemption, but there was one witness, whose representations were not discussed, and that was a Mr. Emerson, who appeared on behalf of the Seamen's Union of the C. I. O. He complained against a Treasury ruling which refuses the exemption to seamen, and our impression was that he did not understand the basis of the ruling, because his proposal would not correct the situation.

The law grants the $100 exemption only to returning residents, and it has long been the rule of the Treasury Department that seamen and other persons who touch the United States in the course of continuous foreign travel are not "returning" to the United States and are, therefore, not within the purview of the statute authorizing the $100 exemption. Seamen are the largest class affected and possibly the next largest class are troops on their way to the Philippines. Then we get the occasional travellers along the Canadian border who weave in and out and who are not supposed to claim the exemption until their final entry. Then we have the honeymooners who travel to Bermuda and the West Indies.

In general, it works to the interest of others than seamen.

* * * *

Mr. Johnson: However, we give the seaman an exemption whenever he leaves the ship without intention of reshipping.

Senator Vandenberg: You mean if they areleaving the sea?

Mr. Johnson: Yes; as they say, 'Going on the beach.'

Senator Vandenberg: You are not overly generous.

Mr. Johnson: No, but it springs from that definition of "returning resident." The court said, I think, in the Mary Garden case, that a returning resident is one who has completed a journey to a foreign country, and I think the "completed" is what prevents the seaman from securing the exemption.

Senator Walsh: That may be rejected. Now, you have a new one for the consideration of the committee.

Mr. Johnson: There is one that is not listed, and that is Senator Schwellenback's amendment on lumber. The Treasury Department has not had an opportunity to get its report data in shape. Do you want us to discuss that briefly?

Senator Walsh: You might.

Mr. Johnson: The purpose of this amendment -- I do not have acopy of the bill before me.

On page 36, line 5, the word "lumber" and a comma would be included after the word "including", so that the language would read "including lumber, shooks and staves when returned as boxes or barrels", et cetera.

Without this amendment, the law, as it stands now, per-

mits shooks and staves to be exported from the United States and assembled abroad into boxes and barrels. We keep records in the office of the American consul as to the number of shooks and staves which are landed from a certain vessel, and then the consul sees that the boxes and barrels exported and covered by his certificates, correspond with the number landed. So, it is a very simple sort of double entry book-keeping that is accomplished under the law.

The insertion of the word "lumber" would permit the importation of containers made of lumber, free of duty, under the same conditions as boxes or barrels made from shooks or staves. This would constitute an exception to the general rule that American goods are not entitled to free entry on return if advanced in value or improved while abroad. Heretofore shooks or staves were the only exception, and it was only a mere assembly operation there.

Now, the difficulty in this proposal would come if lumber is exported in any dimensions that requires resawing. That resawing might be to reduce the thickness ad well as the length or width of the board, and it seems to me, as a practical matter, it would be very difficult to operate these consular accounts in any other way, to identify a certain box imported from abroad as having been made from American lumber.

So, as a practical matter, we very much doubt if this would be of advantage to anyone because of the burdensome re-

quirements we would necessarily impose in order to protect the revenue.

Senator Walsh: You would have to trace the lumber from the time it left the country until it returns?

Mr. Johnson: Yes, sir.

Senator Clark: It seems to me it would take a tremendous number of inspectors.

Mr. Johnson: The reason for this is very sound. The foreign duty, in certain countries -- I believe Japan and Italy were mentioned although I am not sure of the names -- is very high on shooks and low on lumber and the lumber people felt this would open a new market to them for a respectable quantity of wood.

Senator Walsh: The amendment will be rejected.

Mr. Johnson: However, the administrative difficulties are very considerable.

Senator Walsh: Have you anything else to call to the attention of the committee?

Mr. Johnson: The only remaining provision is the State Department proposal on Section 309 of the Tariff Act which I understand has been referred to the Maritime Commission for its views and we understand also that the interdepartmental committee on air commerce is preparing a proposal on that same section to extend the supply withdrawal privilege to foreign aircraft engaged in trade. I might say, off the

record, please ---

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Senator Walsh: Now, is there any other matter?

Mr. Johnson: I understand this proposal on wool, on page 24, is identical with the one proposed by Mr. Marshall.

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Mr. Johnson: Now, about 1923 an actuary of the Treasury Department worked out for us that the specific statutory duty could be figured in each case by a very complicated algebraic formula and it uniformly resulted in a very small fraction over or under 12 cents. As an administative matter, we flattened that out at 12 cents and when the Tariff Act of 1930 came along and the duty on woolen goods and wools was raised, the duty of 12 cents indicated the relative difference in the duty levels.

Senator Walsh: Has there been an interpretation by the Customs Court of this section?

Mr. Johnson: No, sir.

Senator Walsh: So, this is the only proposal that is before us that bears relation to changing a tariff duty?

Mr. Johnson: If there is any correction here it is a correction of something that has been uniformly and publicly interpreted for 16 years.

Senator Walsh: The only other thing was, I think, rugs.

Mr. Johnson: Embroidered and hand-made rugs.

Senator Walsh: I suggest that we have an exhibit of one of those embroidered hand-made rugs where they attempted to evade the law.

Mr. Johnston [Clerk of the Committee on Finance]: Representative Ramspeck wrote a letter enclosing a copy of a proposed House bill which he suggested as a substitute for this bill, providing that no trade agreement with any foreign country be consummated until it has been studied by the War and Navy Departments and a report has been made by them that it will not interfere directly or indirectly with the national defenses of the United States, and with another proviso that if those two departments do certify that any of the articles contained in the agreement are likely to interfere with our national defenses that such articles shall not be included in the agreement.

He wrote a letter to Senator Walsh and addressed a communication to the Treasury Department asking them to advise the committee about it.

Senator Walsh: Have you advised us?

Mr. Johnson: Yes. This is not at all germane to the purposes of the bill.

Senator Walsh: As a matter of fact, I suppose the agreements are submitted to the Army and Navy people.

Mr. Hiss: For a long time we have had a system of communication with the War Department and the Navy Department

on matters affecting them and we have always received advice fromthem on these matters.

Representative Ramspeck wrote a letter to the Secretary of State in reference to his bill, and he was informed that no useful purpose will be served by the enactment of his bill since there is a flexible method now in existence agreeable to all departments which accomplishes the purpose of his bill. Representative Ramspeck's bill would make a rigid and arbitrary requirement on the part of the Army and Navy Departments that all tariff items, which would require them to go over them and make a report thereon, although they have no facilities for that.

Senator Walsh. We shall report the bill to the full committee and shall stand adjourned subject to call.

[Thereupon, at 12 o'clock noon, the subcommitted adjourned subject to call.]

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