

MARKING REQUIREMENTS FOR ARTICLES IMPORTED IN CONTAINERS

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Mr. BYRD of Virginia, from the Committee on Finance, submitted
the following

REPORT

[To accompany H.R. 2513]

The Committee on Finance, to whom was referred the bill (H.R. 2513) to amend the Tariff Act of 1930 to require new packages of imported articles to be marked to indicate the country of origin, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

H.R. 2513 would amend section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), with respect to the marking requirements in the case of articles which are imported in containers required to be marked to show country of origin.

It is the purpose of the bill:

(1) To provide, when such articles are repackaged in the United States and offered for sale, that the new packages be marked to show the country of origin of their contents.

(2) To require that the containers in which such articles are imported be marked (in addition to the country-of-origin marking) to indicate to any person who repackages such articles that subject to penalties of law the new packages must be marked to indicate to an ultimate purchaser the country of origin of their contents.

(3) To require, when such articles are sold for use as (or used as) containers for other goods offered for sale, that such containers be marked to indicate to an ultimate purchaser of the goods offered for sale in such containers the country of origin of such containers.

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1.

GENERAL STATEMENT

Section 304 of the Tariff Act of 1930, as amended, requires that articles of foreign origin imported into the United States be marked in such a way as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the articles. Section 304(a)(3) authorizes the Secretary of the Treasury to except from this general marking requirement articles which for any one or more of various reasons cannot, or need not, be marked. Eleven categories of exceptions are identified in section 304(a)(3). However, section 304(b) requires that, with respect to such excepted articles the containers in which such articles are packaged shall be marked to show the country of origin of their contents.

Practices have developed under existing law under which articles, imported in containers marked to show the country of origin, are removed from the containers and then either (1) repackaged and sold without noting on the new packages the country of origin of the contents or the fact that the same are of foreign origin, or (2) sold for use or used as containers for other goods offered for sale without marking such containers to show their country of origin. Understandably, these practices have created confusion in the minds of certain purchasers as to the origin of the articles inside the new packages or as to the origin of the containers. In some cases, the absence of any indication of foreign origin has caused purchasers to assume that the package or container and the contents were of American origin. Thus, one of the purposes of our marking laws, namely, to give the purchaser information as to country of origin is thwarted in these cases.

Subsection (b) of section 304, as amended by the bill, would continue without change the existing requirement that the immediate container (if any), or such other container or containers, as may be prescribed by the Secretary of the Treasury, of any article excepted from the marking requirements by subdivision (3) of section 304(a), be marked in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article. The bill would add a requirement that any such container or containers shall also be marked in such manner as to indicate to any person who repackages such article that, subject to penalties of law, the new package must be marked to indicate to an ultimate purchaser the English name of the country of origin of its contents. The marking requirements of subsection (b), as amended by the bill, are subject to all the provisions of section 304, including the same exceptions as are applicable to articles under section 304(a)(3). With respect to the requirement that the containers of certain imported articles must be marked to indicate to any person who repackages such articles that the new package must be marked to show the English name of the country of origin of its contents, the bill authorizes the Secretary of the Treasury to except any article from this requirement if such article is not usually repackaged before delivery to an ultimate purchaser.

It is not the intention of the committee that the law should be administered in such a way as to cause changes in practices that have, for a long time, been recognized by the purchasing public or to cause undue hardship when there is no intent to deceive. The provision authorizing the Secretary of the Treasury to except any article where

he finds that "compliance * * * would necessitate such substantial changes in customary trade practices as to cause undue hardship" was drafted in this broad manner so that all categories of items might be protected if they meet the test applied by the Secretary. It would be impossible for the Congress to provide by law for the exceptions item by item, so no attempt was made to mention them in the law. It would seem to follow, however, that the cleaning and mixing of spices, for example, and subsequent repackaging in the type of packages that have for a long time been recognized by the consumer, would not come under the purview of the bill. The same would apply to coffee, tea, chocolate, mixed nuts, olive oil, and a number of other products which have been imported and repackaged over a number of years and without any attempt to deceive the consumer.

A new subsection (e) would be added by the bill to section 304 of the Tariff Act. The new subsection applies with respect to imported articles the containers of which are required to be marked to show the country of origin of such articles. When such an article is removed from such a container and either (1) is offered for sale for use as (or used as) the container for other goods offered for sale, or (2) is repackaged and offered for sale in the new package, new subsection (e) requires the container (the imported article) or the new package to be marked in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the imported article. The new subsection would not apply in cases where the Secretary of the Treasury finds (1) that compliance with the marking requirements of the subsection would necessitate such substantial changes in customary trade practices as to cause undue hardship, and (2) when the article is repackaged, that the repackaging is otherwise than for the purpose of concealing the origin of the article.

Under subdivisions (1) and (2) of section 304(a) of the Tariff Act of 1930, which will apply to the new marking requirements provided by the bill, the Secretary of the Treasury may by regulations (1) determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin, (2) prescribe any reasonable method of marking, (3) prescribe a conspicuous place on the container or package where the marking shall appear, and (4) require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the imported article or as to any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser.

Failure, with intent to conceal the country of origin, to mark containers or new packages as required by the new section 304(e) added by the bill is punishable by a fine of not more than \$5,000 or imprisonment for not more than 1 year, or both. In addition, where any container or package which is required to be marked in accordance with the new section 304(e) is not so marked, such container or package and the contents are subject to seizure and forfeiture under the customs laws. Since the marking requirements provided for by the bill are part of the customs laws of the United States, and since they relate to imported merchandise, the customs laws (including those provisions of the Tariff Act of 1930 which relate to enforcement), apply in respect of violations (or alleged violations) of such marking requirements. Thus, for example, the provisions of title IV of the

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Tariff Act of 1930 relating to reporting of seizures (sec. 602), prosecution (sec. 604), judicial condemnation (sec. 608), summary forfeiture and sale (secs. 609 and 612), disposition of proceeds (sec. 613), remission or mitigation of penalties (sec. 618), and compensation to informers (sec. 619), apply in respect of seizures and forfeitures under the bill. The duties with respect to seizures and forfeitures are to be performed by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury.

DEPARTMENTAL REPORTS

The reports on this bill, submitted by the Departments of Commerce, State, and Treasury, and the Bureau of the Budget, are printed in the hearings held by the Committee on Finance on March 21, 1963. These reports were not in favor of enactment of this legislation.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SECTION 304 OF THE TARIFF ACT OF 1930

(19 U.S.C., 1304)

SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) **MARKING OF ARTICLES.**—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) or (e) 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. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) 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; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(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 two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U.S.C. 1934 edition, title 19, secs. 1351-1354) as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—**【**Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a).**】**
Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container (if any) of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate—

(1) to an ultimate purchaser in the United States the English name of the country of origin of such article, and

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(2) *to any person who repackages such article, that subject to penalties of law the new package must be marked as described in subdivision (1),*

subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. The Secretary of the Treasury may by regulations authorize the exception of any article from the requirements of subdivision (2) of the preceding sentence if such article is not usually repackaged before delivery to an ultimate purchaser. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. 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.

(c) **ADDITIONAL DUTIES FOR FAILURE TO MARK.**—If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(d) **DELIVERY WITHHELD UNTIL MARKED.**—No imported article held in customs custody for inspection, examination, or appraisalment shall 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 or until the amount of duty estimated to be payable under subsection (c) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(e) **MARKING OF NEW PACKAGES, ETC.**—*When any imported article the container of which is required to be marked under the provisions of subsection (b) is removed from such container by the importer, or by a jobber, distributor, dealer, retailer, or other person, and offered for sale for use as (or used as) the container for other goods offered for sale, or repackaged and offered for sale in the new package, such container or new package shall be marked in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of such article. This subsection shall not apply in cases where the Sec-*

retary of the Treasury finds that compliance with the marking requirements of this subsection would necessitate such substantial changes in customary trade practices as to cause undue hardship and, when the article is repackaged, that the repackaging is otherwise than for the purpose of concealing the origin of such article. Subsection (d) of this section shall not apply in respect of the marking requirements of this subsection unless the articles are repackaged before release from customs custody.

[(c)] (f) PENALTIES.—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this Act, he shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both. Any person who, with intent to conceal the country of origin of any article, violates any provision of subsection (e) with respect to such article shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both. Where any container or package which is required to be marked in accordance with subsection (e) is not so marked, such container or package and the contents of such container or package shall be subject to seizure and forfeiture under the customs laws except that the duties with respect to seizures and forfeitures under this subsection shall be performed by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury.

