

Calendar No. 517.

64TH CONGRESS, }
1st Session. }

SENATE.

} REPORT
No. 574.

REFUND OF DUTIES COLLECTED ON PINEAPPLES.

JUNE 30, 1916.—Ordered to be printed.

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

REPORT.

[To accompany H. R. 2184.]

The Committee on Finance, to whom was referred the bill (H. R. 2184) providing for the refund of certain additional duties collected on pineapples, has considered the same and recommend its passage.

Your committee herewith files House Report No. 109, Sixty-fourth Congress, first session, containing the evidence and exhibits upon which the bill was favorably reported to the House, and we adopt the House report as our own.

[House Report No. 109, Sixty-fourth Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 2184) providing for the refund of certain additional duties collected on pineapples, having considered the same, report thereon with a recommendation that it do pass.

Exhibits lettered A, B, and C, as appended hereto, are made a part of this report.

EXHIBIT A.

WASHINGTON, D. C., January 14, 1915.

HON. EDMUND PLATT,
Member of Congress, Washington.

DEAR MR. CONGRESSMAN: I take pleasure in acknowledging the receipt of your letter of yesterday's date, inclosing H. R. 13161, regarding a refund to R. U. Delapenha & Co. certain additional duties paid by them upon pineapples imported from Singapore.

In reply I take pleasure in giving my opinion that all the 6-pound chunks of pineapples (which I understand is the only kind in question) imported by the steamers mentioned in Report 796, which you forwarded to me, as originating in Singapore, would be liable to the same duty. They were exported on the same date by each vessel, were exactly the same merchandise, having the same origin, therefore the duty assessed on the pineapples of each vessel would be the same, all other things being equal, though consigned to a number of various firms. It would seem that any additional duties paid by this firm over and above those paid by his competitors, receiving

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identically the same goods by the same vessel, should in equity be refunded unless conditions arose after shipment that I know nothing of.

There were errors made in my office regarding the consular valuations, but these were fully explained as soon as they were brought to my attention under date of July 10, 1913, and I presumed that these corrections had been considered by the appraiser, I was very glad to make the corrections, as the consular valuations were obviously incorrect, though my error was based upon certificates made by shippers.

I trust that the foregoing will be satisfactory. I beg to remain,

Very respectfully, yours,

EDWIN S. CUNNINGHAM.

EXHIBIT B.

In the matter of *R. U. Delapenha & Co. v. United States Treasury Department* concerning fines improperly and unjustly imposed against *R. U. Delapenha & Co.* by the United States Government in connection with four importations of Singapore canned pineapple and paid on July 15, 1913, as follows: Importation per steamship *City of Baroda*, arrived at New York January 24, 1913, entry No. 22615, \$112.32; importation per steamship *Indrakuala*, arrived at New York February 17, 1913, entry No. 44599, \$415.20; importation per steamship *Erroll*, arrived at New York February 21, 1913, entry No. 50208, \$217.91; importation per steamship *Egremont Castle*, arrived at New York March 14, 1913, entry No. 61474, \$36.88.

We respectfully submit below our brief containing the facts which we believe establish beyond question that we are entitled to receive a prompt refund of the above fines from the United States Government:

First, Complainants, *R. U. Delapenha & Co.*, of New York City, being regularly engaged in the business of preserving fruits received in cans and otherwise from various countries, and having a large manufacturing establishment for this purpose located on the Hudson River near Poughkeepsie, N. Y., have for some years been engaged in the regular importation of the article known as Singapore canned pineapple slices and Singapore canned pineapple chunks, which article under the present tariff act is dutiable at the rate of 25 per cent ad valorem.

Second. In the regular course of complainants' business the four importations above mentioned arrived here during January, February, and March of this year (1913), and as four separate fines were imposed upon us by the Government, we hereby wish to make four separate and distinct claims for refund of same, and therefore enumerate our claims below as claims Nos. 1 to 4, respectively.

Claim No. 1 (fine of \$112.32).—Five hundred and forty cases Singapore canned pineapple chunks arrived in New York for us on the steamship *City of Baroda* January 24, 1913, customhouse entry No. 22615. These goods had been purchased by us from Messrs. Katz Bros. (Ltd.), of Singapore, at 14/- per case, cost and freight New York, several months before shipment, for future delivery. When this merchandise was ready for shipment, a material decline had taken place in the market at port of shipment and we were informed by the representative of the shippers, Mr. Herman Pauli, of New York, that several other of their New York customers had the same identical merchandise on the same vessel, consigned in Singapore the same day as our shipment, and that the United States consul in Singapore had made a notation on the consular invoices of these other New York importers to the effect that the market value in China of these pineapple chunks on date of shipment was \$4.10 per case, Straits Settlements currency. We, in good faith, therefore, entered our merchandise at this value and similar action was taken by the other two importers referred to above. The customhouse appraiser, upon examination of the goods, added to market value \$1 per case, to which we entered our regular protest, and similar action was taken by the other two importers. A reappraisal hearing was had in our case, at which time the appraised value was reduced to \$4.50 per case Straits Settlements currency; in other words, the United States consul's statement of market value was advanced from \$4.10 to \$4.50 per case. We then requested a re-appraisal, which was granted, during which the board of appraisers sustained the general appraiser's advance, notwithstanding the fact that the two other importers already mentioned (who brought the identical merchandise in on the same day, on the same vessel, consigned on the same date and at the same value, and shipped by the same shippers), upon the decisions of the general appraiser, had their entered value of \$4.10 sustained, thus singularly giving us different treatment. We respectfully refer you to reappraisal circulars No. 2534-2536, issued by the Treasury Department at Washington, April 12, 1913. (See item No. 22296 on page 3, relating to pineapples from Katz Bros. & Co., Singapore, exported December 9, 1912, entered at New York;

file No. 69337; entry No. 21618 to 21621; consul's valuation of \$4.10 Straits Settlements currency per case sustained by the United States General Appraiser Somerville.) We think it advisable to add that by the decision of General Appraiser Somerville in this case there was levied a trivial advance by addition of bill brokerage and stamp, interest and purchasing commission, which, however, is not one of the issues involved in any of our claims.

Claim No. 2 (fine of \$415.20).—Five hundred and ninety-nine cases of Singapore canned pineapple chunks arrived in New York on the steamship *Indrakuala* February 17, 1913, entry No. 44599. On this same vessel another New York importer had the identical character of goods, packed by the same shipper, consulated at Singapore on the same date and at the same value as designated on our consular invoice, namely, \$4 per case Straits Settlements currency. In good faith our goods were entered at the New York customhouse at the valuation stated by the United States consul, namely, \$4 per case Straits Settlements currency, and this other importer acted likewise. The appraiser, however, on our importation added to make market value \$1.30 per case, to which we protested, and at a hearing before a general appraiser the valuation was reduced from \$5.30 per case to \$5 per case. Again we asked for a re-appraisal, and the Board of General Appraisers then sustained the decision of the general appraiser. The other importer who had the identical goods on the same steamer, consulated the same day, and on whose invoice the appraiser also made an advance to \$5.30 per case from \$4 per case and who had protested, had his entered value of \$4 per case sustained by the general appraiser. This was the second instance where we were singularly treated differently than other importers. We again respectfully refer you to reappraisal circulars Nos. 2534 to 2536. (See item No. 22295 on p. 3, pineapple from Katz Bros. (Ltd.), Singapore, exported November 18, 1912, entered at New York, file No. 69316, entry No. 39448, before General Appraiser Somerville, entered at \$4 Straits Settlements currency per case; no advance.) We again call to your attention that the trivial advance named by the general appraiser in this case for bill brokerage and stamp, interest, and purchasing commission is not one of the issues in our claim.

Claim No. 3 (fine of \$217.91).—Six hundred and twenty-two cases of Singapore canned pineapple slices arrived in New York February 21, 1913, on steamship *Erroll*, entry No. 50208. The United States consul in Singapore who signed our consular invoice at time of shipment had noted thereon a market value of \$4.90 per case, Straits Settlements currency, at which price we, in good faith, entered the goods. The appraiser advanced this price to \$6 per case. On protest by us the general appraiser reduced the market value from \$6 to \$5.50 per case, Straits Settlements currency, which advance was sustained by the general board.

Claim No. 4 (fine, \$36.88).—One hundred and forty-seven cases of Singapore canned pineapple slices arrived in New York March 4, 1913, on steamship *Egremont Castle*, entry No. 1474. The United States consul at Singapore, who signed the consular certificate at the time of shipment, had entered a market value of \$5 per case, Straits Settlements currency, at which figure we, in good faith, paid duty on arrival. The appraiser advanced this value to \$6 per case, Straits Settlements currency. On protest, the general appraiser reduced this figure to \$5.50 per case, Straits Settlements currency, which was sustained by the general board.

Third. Complainants, fully realizing that the above fines were improperly and unjustly levied against them, and in order to fully protect their rights, expressly paid the amount of these fines to the Treasury Department under protest, addressed to the collector of customs at the port of New York.

Fourth. Upon the final adverse decision of the Board of General Appraisers in connection with each of the above claims, complainants made written appeal to the Secretary of the Treasury (their letter to the Secretary of the Treasury at Washington, dated May 13, 1913), explaining to him the above facts in detail. This appeal was denied by the Secretary of the Treasury in a letter addressed to the collector of customs at the port of New York and signed by F. M. Halsted, Division of Customs, Washington. From this letter, denying our appeal, it becomes quite clear that the merits of our case were not gone into at all by the Secretary of the Treasury and that our case was decided solely upon the point that the valuation arrived at by the General Board of Appraisers was final (notwithstanding the instances of discrimination practiced against us and the apparent injustices done us as a result of same), and the Secretary further held that it was not in his power to reopen this case, the department being precluded by law from remitting these fines, and which resulted in the denial of our application.

Fifth. In every one of the above instances we acted in absolute good faith in accepting the United States consul's market value as being the one to be recognized, and, in consequence, have been placed in the unjust position of having been discriminated against on account of other importers in New York City bringing in the identical

merchandise, packed by the same shipper, forwarded on the same steamer, consulsated on the same date, having the entry value of the United States consul in Singapore sustained, while we have been fined to the extent of \$782.31 on the four shipments named.

Wherefore, there being no provision under the present tariff act for an appeal from the decision of the Board of General Appraisers and from the subsequent decision of the Secretary of the Treasury, this application is respectfully addressed to the Congress of the United States, praying for an appropriation for the purpose of reimbursing complainants for the sum of \$782.31 unjustly and illegally collected from them.

STATE OF NEW YORK,
County of New York, ss:

Arthur Ruykhaever, being duly sworn, says that he is vice president of R. U. Delapenha & Co., the complainant mentioned in the foregoing brief, a foreign corporation organized and existing by virtue of the laws of New Jersey, and that he has read and knows the contents of the foregoing brief, and that the same is true to his knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ARTHUR RUYKHAVER.

Sworn to before me, this 16th day of December, 1915.
[SEAL.]

EDWARD LAYTON,
Notary Public, Queens County, No. 1146.

Certificate filed in New York County, No. 51; certified New York register No. 7081; term expires March 30, 1917.

EXHIBIT C.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 2, 1914.

The CHAIRMAN COMMITTEE ON CLAIMS,
House of Representatives.

SIR: I have the honor to acknowledge the receipt of a letter, under date of the 16th ultimo, from Hon. Luther W. Mott, inclosing a copy of a bill, H. R. 13161, referred to your committee, providing for the refund to Messrs. R. U. Delapenha & Co., of New York, of the sum of \$782.31, additional duties collected on certain pineapples imported by them through the port of New York, in January, February, and March, 1913, and requesting an opinion as to the merits of the claim.

In reply, I have to state that the importations in question consisted of four shipments covered by entries Nos. 22615, 44591, 50208, and 61474. It appears that the importers made entry on invoices showing the prices actually paid for the merchandise and deducted from the prices to make market value in accordance with the notation of the American consul at Singapore, showing that the market value on the date of shipment was less than the actual price paid.

The local appraiser advanced the value and on reappraisal the advances were reduced by the general appraiser, but the reappraised values were still considerably in advance of the entered values. On re-reappraisal the reappraised values were confirmed by the Board of Three General Appraisers, and became final and conclusive against all parties, as provided by subsection 13 of section 28 of the tariff act of 1909. The additional duties of 1 per cent ad valorem for each 1 per cent that the appraised value exceeded the entered value were, therefore, assessed by the collector in accordance with subsection 7 of the said section 28 of the tariff act of 1909. The additional duties in question amounted to \$782.31, the amount claimed in the bill.

It further appears that at the time these shipments were made from Singapore the market for pineapples at that place was very unsettled, and the Board of General Appraisers found that the estimated value of the American consul was erroneous, and that his calculations were based upon contracts entered into at the time of shipments for deliveries to be made about three months thereafter. The department is further advised that in one instance it appears that the consul certified to three different values on the same date, the variance being due to the different contracts which came under his observation at the time. The importers it appears were guided in

their entries by the consul's certificates, which had theretofore been followed by appraising officers.

Application was made to the department for relief from the additional duties, but as subsection 7 of section 28 of the tariff act of 1909 provided that additional duties shall not be remitted nor payment thereof in any way avoided except in cases arising from manifest clerical error, and no manifest clerical error was shown in these cases, the department was unable to grant relief in the matter.

If Congress, however, in view of the facts set forth, sees fit to refund the additional duties accruing in the cases in question, the department will interpose no objection thereto.

Respectfully,

W. G. McAdoo, *Secretary.*

