

RELIEF OF EASTERN TELEPHONE SUPPLY AND MANUFACTURING, INC., AND OTHER MATTERS

AUGUST 11 (legislative day, MAY 17), 1978.—Ordered to be printed

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

REPORT

[To accompany H.R. 10161]

The Committee on Finance to which was referred the bill (H.R. 10161) for the relief of Eastern Telephone Supply & Manufacturing, Inc., having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill, as amended, do pass.

I. SUMMARY

The first section of H.R. 10161 would provide Eastern Telephone Supply and Manufacturing, Inc., the possibility of administrative and judicial review of an alleged error by the Customs Service. The alleged error related to entries of telephone equipment from Canada during 1974.

Section 2 of H.R. 10161, as amended, would temporarily permit, through June 30, 1981, duty-free entry of crude and refined natural graphite. This provision would continue a duty suspension which was in effect from October 21, 1975, to June 30, 1978.

Section 3 of H.R. 10161, as amended, would temporarily permit, through June 30, 1980, duty-free entry of assembled freight cars.

II. REASONS FOR THE BILL

Although the U.S. Customs Service agrees that Eastern Telephone overpaid duties, it contends Eastern is not entitled to administrative and judicial review of the error because it failed to file a protest in the manner and within the period required by law and regulations.

Under the particular circumstances of this case, the committee believes Eastern should be permitted an opportunity to file a formal protest and get a review of the alleged error.

The sole domestic producer of natural graphite is currently unable to meet the needs of domestic manufacturers of graphite products. Enactment of section 2 of H.R. 10161 would reduce the costs to graphite product manufacturers keeping the products competitive in foreign markets.

There is a severe shortage of railroad freight cars which domestic manufacturers will be unable to remedy in the near term. Enactment of section 3 of H.R. 10161 would increase the availability of freight cars and help in moderating the existing shortage.

III. GENERAL EXPLANATION

A. EASTERN TELEPHONE SUPPLY AND MANUFACTURING, INC.

Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) provides that the liquidation of entries becomes final unless a protest is filed with the appropriate customs officer within 90 days from the date of liquidation.

The first section of H.R. 10161 would allow Eastern Telephone Supply and Manufacturing, Inc., of Newport, R.I., to file, within 60 days after enactment of the bill, a protest with Customs concerning the overpayment of customs duties on goods purchased from Bell of Canada that entered the United States between February and December 1974.

Eastern Telephone Supply & Manufacturing, Inc., purchased used telephone equipment from Bell of Canada for about \$235,000. The equipment entered the United States through various ports between February and December 1974. The customs broker for these entries was F. W. Myers Co., Rouses Point, N.Y.

Customs maintains that Eastern and its broker did not supply sufficient documentation to establish the value of the equipment at the time of entry. Eastern disputes this allegation.

After receiving the goods, Eastern discovered they were defective and reached agreement with Bell that the value was actually \$40,000. Eastern brought this to the attention of Customs and received a refund of overpaid duties for entries at one port. Customs officers refused to make refunds at other ports.

Customs agrees that there was an overpayment of duties by Eastern. However, Customs contends that Eastern failed to file a formal protest of the duty overpayment in the manner and within the period required by law and regulations.

The Subcommittee on International Trade of the Committee on Finance held hearings on H.R. 10161 on July 31, 1978. The committee heard favorable testimony on the bill. The committee understands the Treasury Department opposes enactment of section 1 of H.R. 10161, as amended, because it would give preferential treatment to one company. The committee believes the circumstances justify giving Eastern Telephone an opportunity to file a formal protest and get review of the alleged error by the Customs Service.

B. CRUDE AND REFINED NATURAL GRAPHITE

Section 2 of H.R. 10161, as amended, contains the substance of H.R. 10625, which would temporarily suspend the duties on graphite. Graphite is a soft, black, greasy form of carbon. It is used in foundry facings, steelmaking, lubricants, refractories, pencils, and batteries.

Natural crystalline flake, lump, and chip graphite are classified under TSUS items 517.21, 517.24, and 517.27. The column 1 (non-discriminatory or "Most-Favored-Nation") rate of duty for item 517.21 is 7.5 percent ad valorem; for item 517.24, 0.4 cents per pound; and for item 517.27, 2.5 percent ad valorem. If produced in certain beneficiary developing countries, column 1 imports under the above items are eligible for duty-free treatment under the generalized system of preferences. From October 2, 1975, through June 30, 1978, the MFN rates under the items mentioned above were suspended under TSUS item 909.01.

Section 2 of H.R. 10161, as amended, would extend duty-free treatment to articles classified under item 909.01 entered, or withdrawn from warehouse, for consumption after June 30, 1978. The duty-free treatment would continue until the close of June 30, 1981.

There is only one domestic producer of graphite. Domestic consumption of natural graphite in 1977 was approximately 66,000 tons. The domestic producer can supply only a small portion of domestic demand.

About 12 companies import, process and sell graphite products to industrial users. In 1977, total natural graphite imports were 84,000 tons. Mexico supplied 55,000 tons; Malagasy Republic, 5,000 tons; and Sri Lanka, 2,000 tons. The committee amended the language in H.R. 10625 to clarify the retroactive application of the duty suspension to July 1, 1978.

The Subcommittee on International Trade held hearings on H.R. 10625 on July 31, 1978. No objections were heard. The administration has no objections to enactment of section 2 and the Departments of Treasury and Commerce favors its enactment.

C. FREIGHT CARS

Section 3 of H.R. 10161, as amended, contains the substance of S. 3326, with amendments, to permit temporary duty-free entry of assembled freight cars. Railroad and railway rolling stock, including passenger, baggage, mail, freight, and other cars which are not self-propelled, are dutiable under TSUS item 690.15 at a column 1 (MFN) rate of 18 percent ad valorem. MFN imports are eligible for duty-free treatment if imported from a designated beneficiary developing country under the generalized system of preferences (GSP) (19 U.S.C. 2461 et seq.). Imports from Mexico classified under item 690.15 are not entitled to GSP treatment.

Prior to March 1, 1978, imports of Mexican freight cars were accorded duty-free treatment under GSP. Duty-free status under GSP is not available to any beneficiary developing country for an eligible article for any calendar year when that country supplies 50 percent

or more of the appraised value of the total imports of that article during that year. Mexico and Canada are the only significant suppliers of assembled freight cars to the United States. During 1977 and 1978, Canada experienced a shortage of freight car and ceased exporting any cars to the United States. Mexico therefore became the sole source. Under section 504 of the Trade Act of 1974 (19 U.S.C. 2464), GSP treatment for Mexican freight cars terminated and the duty reverted to an 18-percent ad valorem rate, effective March 1, 1978.

Mexico, prior to the announcement of the withdrawal of GSP treatment for freight cars, entered into an agreement to supply U.S. purchasers with about \$31.7 million worth of freight cars. Approximately half the value of the Mexican freight cars consists of components produced in the United States.

There have been recent indications that there is a railroad freight car shortage in the United States. While the origins of this shortage are not well defined, it does seem likely that the shortage will continue for the next 3 to 5 years. The shortage has impacted especially on the transport of agricultural commodities.

Section 3 of H.R. 10161 would add new item 912.06 to the TSUS providing for temporary duty-free treatment for imports of assembled freight cars entered after February 28, 1978, and on or before June 30, 1980. Furthermore, only freight cars the sale of which is pursuant to a contract signed before March 1, 1978, or after the date of enactment of the bill would be eligible for duty-free treatment. The committee also decided to require the Federal Railroad Administration to study the probable domestic supply and demand of freight cars after June 30, 1980, to determine whether a continuation of the suspension of duties after that date will help alleviate the freight car shortage, if one exists at that time. The report would be supplied to Congress by January 1, 1980.

The Subcommittee on International Trade held hearings on S. 3326 on July 31, 1978. Favorable testimony was heard. The administration has no objection to enactment of section 3 and the Department of State favors its enactment.

IV. COST OF CARRYING OUT THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the committee estimates that the annual customs revenue loss resulting from the enactment of the first section of H.R. 10161 will not exceed \$17,500. The exact cost, if any, will depend on the results of administration and judicial review. The annual customs revenue loss resulting from the enactment of section 2 will be approximately \$57,000. The committee estimates the revenue effect of section 3 of the bill to be an annual customs revenue loss of approximately \$6 million.

V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee states that H.R. 10616, as amended, will not regulate any individuals or business.

VI. VOTE OF THE COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill, as amended, was ordered favorably reported by a voice vote.

VII. CHANGE IN EXISTING LAW

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

TARIFF SCHEDULES OF THE UNITED STATES

APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of duty		Effective period
		1	2	
PART 1.—TEMPORARY LEGISLATION				
Subpart B.—Temporary Provisions Amending the Tariff Schedules				
909.01	Graphite, crude and refined, natural (provided for in item 517.21, 517.24, or 517.27, part 1E, schedule 5)	Free	No change	On or before [6/30/78] 6/30/81.
912.06	Assembled freight cars (provided for in item 690.15, subpart A, part 6, schedule 6)	Free	No change	On or before 6/30/80.

