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REPORT
No. 2165

SUBSTITUTION FOR DRAWBACK PURPOSES

AUGUST 4, 1958.—Ordered to be printed

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

R E P O R T

[To accompany H. R. 9919]

The Committee on Finance, to whom was referred the bill (H. R. 9919) to amend the Tariff Act of 1930 to extend the privilege of substitution for the purposes of obtaining drawback upon reexportation to all classes of merchandise, and for other purposes, having considered the same, report favorably thereon, without amendment and recommend that the bill do pass.

The purpose of H. R. 9919 is to amend the customs drawback law by making applicable with respect to drawback of duties on all commodities the "substitute" provision contained in section 313 (b) of the Tariff Act of 1930, as amended, which is now applicable to drawback of duty on sugar, metal, ore-containing metal, flaxseed or linseed oil, and printing paper, coated or uncoated.

GENERAL STATEMENT

At the present time, under section 313 of the Tariff Act of 1930, as amended, drawback of duties paid on imported merchandise used in the United States in the manufacture or production of articles which are exported is allowed in two general situations: (1) When the imported merchandise actually appears in the exported article, and (2) when the exported article is made wholly or in part from domestic merchandise of the same kind and quality as the imported duty-paid merchandise which the manufacturer of the exported article has used within a specified period, i. e., on a so-called "substitution" basis. The privilege of substitution is limited under the existing section 313 (b) to sugar, metal, ore containing metal, flaxseed or linseed, flaxseed or linseed oil, and coated or uncoated printing papers. H. R. 9919, would amend section 313 (b) of the Tariff Act of 1930 to extend the privilege of substitution to all classes of merchandise used in the manufacture or production of articles for exportation.

The specific provisions of the Tariff Act of 1930, as amended, which are pertinent and which will be helpful in further explaining the changes which would be made by H. R. 9919, are as follows:

Section 313 (a) of the Tariff Act of 1930 provides, with certain exceptions not here relevant, for "drawback" or refund of 99 percent of the duties paid on imported merchandise used in the manufacture or production of articles exported from the United States. Section 313 (h) provides that drawbacks of duty are allowable only if the "drawback products" are exported within 5 years after importation of the merchandise on which drawback is claimed. Sections 313 (a) and (h) constitute the general provisions relating to drawback of duties on account of exportation of products made from dutiable merchandise; under these provisions, drawbacks of duty are allowable only if the imported merchandise on which drawback of duty is claimed has actually been used in the production of the exported articles. However, section 313 (b) makes special provision for drawback of duties on sugar, metal, ore containing metal, flaxseed or linseed oil, and coated or uncoated printing paper. This section provides for drawback of 99 percent of the duties paid on imports of the named materials where domestic materials of the same kind and quality have been substituted for imported materials in the production of the exported articles concerned. In order for drawback of duties to be allowed under section 313 (b), both domestic and imported merchandise of the kinds named must have been used in further manufacture within 3 years after the receipt of the imported merchandise by the manufacturer of the exported articles. This is in addition to the requirement under section 313 (h), applicable to all imported merchandise, that drawbacks are only payable if the exportation to which the particular drawback claim relates has occurred within 5 years of the importation of the merchandise on which the duties were paid.

The payment of drawbacks is designed to relieve domestic processors and fabricators of imported dutiable merchandise, in competing for export markets, of the disadvantages which the duties on the imported merchandise would otherwise impose upon them. Such relief for processors and fabricators has long been regarded as a concomitant of the tariff system. Provision for drawback of duties paid on imported merchandise used in the production of exported articles has, accordingly, been a feature of United States tariff legislation for a long time.

The substitution provision was first introduced in the Tariff Act of 1930. It was designed to relieve processors and fabricators of products made from these materials of the difficulty and expense of specifically identifying the imported materials that had been used in the production of exported products in order to establish eligibility for drawback. In support of the provisions as originally enacted in the 1930 act, it was pointed out that sugar refiners and processors of nonferrous metal ores frequently use raw materials of both foreign and domestic origin and that only with great inconvenience and expense could these processors conduct their operations in such a way as to separately identify that part of their output containing imported materials and the actual amounts so used. From time to time since the original substitution provision was added to the drawback section in the Tariff Act of 1930, other articles have been included in the list

of articles on which substitution is permitted. The original provision for nonferrous metals and ore containing nonferrous metals was broadened to extend to all metals; flaxseed and linseed oil was added; and finally, printing paper, coated or uncoated, was added.

The favorable reports from the Departments of Commerce, Treasury and State, Bureau of the Budget, and the analysis made by the United States Tariff Commission are printed below:

THE SECRETARY OF COMMERCE,
May 6, 1958.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in reply to your request of March 3, 1958, for the views of this Department with respect to H. R. 9919, a bill to amend the Tariff Act of 1930 to extend the privilege of substitution for the purpose of obtaining drawback upon reexportation to all classes of merchandise and for other purposes.

We understand that the privilege of substitution provided for in section 313 (b) of the Tariff Act of 1930 only for sugar and nonferrous metals, and since extended to flaxseed and printing paper, has operated satisfactorily for that brief list of imports. Since that subsection limits the granting of drawback on imported materials to those "of the same kind and quality" as those used by United States manufacturers in producing for export, the Customs Service has found it possible to develop a procedure which is administrable. At the same time, this provision has relieved domestic manufacturers of articles for export from the necessity of maintaining precise identification of the above-imported materials in order to obtain the drawback of the duty paid.

After a quarter of a century of operations, the desirability of this type of legislation has proved itself. We therefore believe it desirable that the substitution privilege be extended to those additional imported materials which may be used in processing for exports. Since the proposed legislation contains the same statutory test as has been employed in the past, it should not cause problems of a more difficult character than those encountered by the Customs in the operation of the present law.

The Department therefore favors enactment of H. R. 9919.

We have been advised by the Bureau of the Budget that it would interpose no objection to the submission of this report to your committee.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, April 29, 1958.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your request of March 3, 1958, for a statement of the views of this Department on H. R. 9919, a bill to amend the Tariff Act of 1930 to extend the privi-

lege of substitution for the purpose of obtaining drawback upon re-exportation to all classes of merchandise, and for other purposes.

The proposed legislation would extend to all commodities the privilege of substitution for the purpose of obtaining drawback of duties upon reexportation.

This Department does not believe any unusual administrative difficulties would arise if the proposed legislation is enacted.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

A. GILMORE FLUES,
Acting Secretary of the Treasury.

DEPARTMENT OF STATE,
April 14, 1958.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
United States Senate.*

DEAR SENATOR BYRD: In further reply to your letter of March 3, 1958, which was acknowledged by my letter of March 5, 1958, the following report is submitted on H. R. 9919, a bill to amend the Tariff Act of 1930 to extend the privilege of substitution for the purpose of obtaining drawback upon reexportation to all classes of merchandise, and for other purposes.

The Department of State strongly supports extension of the substitution-for-drawback provision of the Tariff Act as a method of facilitating increased international trade to the direct benefit of importers, exporters, and producers in the United States and foreign countries. The precise recommendation of the executive branch on this matter is contained in section 106 of the customs administrative bills currently before the House Committee on Ways and Means (H. R. 9424 and H. R. 9425). However, we believe the provisions of H. R. 9919 would be a satisfactory substitute for section 106 of H. R. 9424 and H. R. 9425 from the standpoint of United States foreign policy.

The Department has no comment on the administrative aspects of H. R. 9919, which fall within the responsibility of the Department of the Treasury.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary
(For the Secretary of State).

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,*Washington, D. C., April 25, 1958.*

Hon. HARRY F. BYRD,

*Chairman, Committee on Finance,
United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letter of March 3, 1958, requesting a report on H. R. 9919, a bill to amend the Tariff Act of 1930 to extend the privilege of substitution for the purpose of obtaining drawback upon reexportation to all classes of merchandise, and for other purposes.

Extension of the substitution-for-drawback privilege would relieve additional domestic manufacturers of the difficulty and expense of specifically identifying imported merchandise incorporated in articles for export through all stages of production in order to obtain the drawback of duty. Therefore, the Bureau of the Budget favors the enactment of legislation extending this privilege to as many classes of merchandise as is consistent with efficient and effective customs administration.

Since the Treasury Department, in a separate report to your committee, states that it does not believe any unusual administrative difficulties would arise if the proposed legislation were enacted, we recommend that favorable consideration be given to H. R. 9919.

Sincerely yours,

PHILLIP S. HUGHES,
*Acting Assistant Director of Legislative Reference.*UNITED STATES TARIFF COMMISSION,
*Washington, February 4, 1958.*MEMORANDUM FOR THE COMMITTEE ON WAYS AND MEANS, HOUSE
OF REPRESENTATIVES, ON H. R. 9919, 85TH CONGRESS, A BILL TO
AMEND THE TARIFF ACT OF 1930 TO EXTEND THE PRIVILEGE OF
SUBSTITUTION FOR THE PURPOSE OF OBTAINING DRAWBACK UPON
REEXPORTATION TO ALL CLASSES OF MERCHANDISE, AND FOR
OTHER PURPOSES

H. R. 9919 would, if enacted, liberalize the customs drawback law by making applicable with respect to drawback of duty on all commodities the "substitution" provision contained in section 313 (b) of the Tariff Act of 1930, as amended, which is now applicable to drawback of duty on sugar, metal, ore containing metal, flaxseed or linseed oil, and printing paper, coated or uncoated.

Section 313 (a) of the Tariff Act of 1930 provides for drawback or refund of 99 percent of the duties paid on imported merchandise used in the manufacture or production of articles exported from the United States, except that no drawback is allowed of duties paid on imported wheat used in the production of exported flour or byproducts. (This latter provision needs no explanation in this report.)

Section 313 (h) provides that drawbacks of duty are allowable only if the drawback products are exported within 5 years after importation of the merchandise on which drawback is claimed.

Sections 313 (a) and (h) constitute the general provisions relating to drawback of duties on account of exportation of products made from dutiable merchandise; under these provisions, drawbacks of duty are allowable only if the imported merchandise on which drawback of duty is claimed has actually been used in the production of the exported articles. However, section 313 (b) makes special provision for drawback of duties on the articles mentioned above. This section provides for drawback of 99 percent of the duties paid on imports of the named materials where domestic materials of the same kind and quality have been substituted for imported materials in the production of the exported articles concerned. In order for drawback of duties to be allowed under section 313 (b), both domestic and imported merchandise of the kinds named must have been used in further manufacture within 3 years after the receipt of the imported merchandise by the manufacturer of the exported articles. This is in addition to the requirement under section 313 (h) applicable to all imported merchandise, that drawbacks are only payable if the exportation to which the particular drawback claim relates has occurred within 5 years of the importation of the merchandise on which the duties were paid.

The payment of drawbacks is designed to relieve domestic processors and fabricators of imported dutiable merchandise, in competing for export markets, of the disadvantages which the duties on the imported merchandise would otherwise impose upon them. Such relief for processors and fabricators has long been regarded as a concomitant of the tariff system. Provision for drawback of duties paid on imported merchandise used in the production of exported articles has, accordingly, been a feature of United States tariff legislation for a long time.

The substitution provision was first introduced in the Tariff Act of 1930. It was designed to relieve processors and fabricators of products made from these materials of the difficulty and expense of specifically identifying the imported materials that had been used in the production of exported products in order to establish eligibility for drawback. In support of the provision as originally enacted in the 1930 act, it was pointed out that sugar refiners and processors of nonferrous metal ores frequently use raw materials of both foreign and domestic origin and that only with great inconvenience and expense could these processors conduct their operations in such a way as to separately identify that part of their output containing imported materials and the actual amounts so used.

From time to time since the original substitution provision was added to the drawback section in the Tariff Act of 1930, other articles have been included in the list of articles on which substitution is permitted. The original provision for nonferrous metals and ore containing nonferrous metals was broadened to extend to all metals; flaxseed and linseed oil was added; and finally, printing paper, coated or uncoated was, added.

As indicated in the opening paragraph of this memorandum, the bill under consideration would, by amendment of section 313 (b), make the substitution provision applicable as regards drawbacks of duties on imported merchandise generally.

It was urged before the Senate Finance Committee when it was considering revision of the Tariff Act in 1929 that the substitution

provision be made general rather than confined to sugar, nonferrous metals, and ores containing such metals. The committee, however, reported to the Senate that the substitution privilege was peculiarly adapted to these products and that the committee did not believe that it was sound or advisable to make the provision applicable generally. The committee concluded, however, that "the administration of the provision in the case of sugar and nonferrous metal will demonstrate the practicability of making the privilege general at a future date." As has been previously indicated, there has been a broadening of the original provision on several occasions.

It would appear that the special reason which caused the insertion in the Tariff Act of 1930 of the substitution provision with respect to drawbacks of duty on sugar, nonferrous metals, and ores containing nonferrous metals, and the several additions to this provision which have been made over the years since 1930, would not apply in the case of many other types of merchandise, especially fabricated articles. The Tariff Commission has not made an exhaustive study of the operation of the drawback system in practice as would enable it to determine whether the generalization of the substitution provision to cover all commodities would be desirable and practicable. As the Treasury Department has developed rather elaborate regulations regarding procedures to be followed in establishing claims for drawbacks under the substitution provision, that department should be in a much better position than the Commission to explain the probable effects of such generalization, or of broadening the application of the substitution provision, so as to cover additional specific commodities. In any case, the committee will undoubtedly be securing information from the Treasury Department regarding H. R. 9919.

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 italics; existing law in which no change is proposed is shown in roman):

* * * * *
 SEC. 313. DRAWBACK AND REFUNDS.

(a) * * * * *

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.—If imported duty-paid [sugar, or metal, or ore containing metal, or flaxseed or linseed, or flaxseed or linseed oil, or printing papers, coated or uncoated,] *merchandise* and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would

have been allowable had the [sugar, or metal, or ore containing metal; or flaxseed or linseed, or flaxseed or linseed oil, or printing papers, coated or uncoated,] *merchandise* used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

